

ARIZONA JUDICIAL COUNCIL

Request for Council Action

**Date Action
Requested:**

October 21, 2021

**Type of Action
Requested:**

☒ Formal
Action/Request
☐ Information Only
☐ Other

Subject:

Report and
Recommendations of
the Task Force on Jury
Data Collection,
Practices, and
Procedures

FROM:

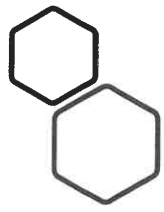
Jennifer R. Albright, Sr. Policy Analyst, AOC; Staff to the Task Force
Presentation by Honorable Pamela S. Gates, Chair

DISCUSSION:

The Chair of the Task Force, Honorable Pamela Gates, will present the Report and Recommendations of the task force. Approval of the recommendations will be sought from the Council.

RECOMMENDED COUNCIL ACTION:

Motion to approve and adopt the recommendations.



Task Force on Jury Data, Practices, & Procedures Summary of Recommendations

October 2021

Hon. Pamela S. Gates, Chair

FAIR BECAUSE I WAS THERE

Administrative Order 2021-35

Explore and make recommendations regarding:

- Data collection including demographic data;
- Adequacy of current source lists;
- Methods of increasing response rates & decreasing barriers to service;
- Juror pay;
- The reduction of peremptory challenges during post-pandemic recovery;
- Affect of peremptory challenges on empaneled juries; and
- Content for public education.


Summary of Task Force Recommendations

- 1) Recommendations to improve the public's understanding and perception of jury service;
- 2) Maximizing the use of summoned jurors and ensuring courts collect and analyze data to verify that summoned jurors represent a fair cross section of the community;
- 3) Overcoming barriers to jury service; and
- 4) Minimizing the potential for discrimination in the jury selection process.



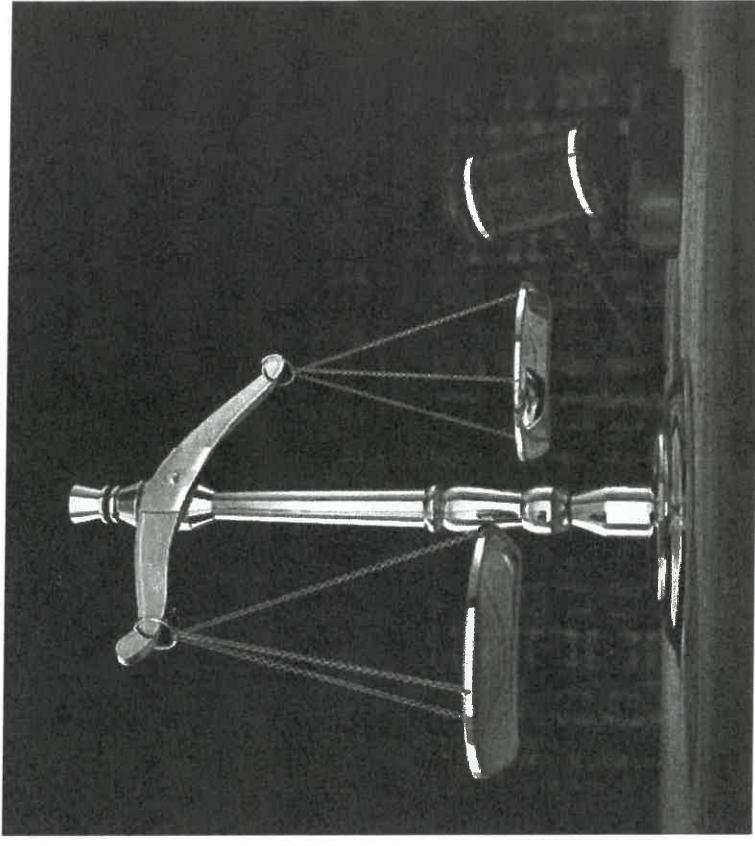
Public Education & Engagement

Fair Because I Was There

- Outreach to community and public interest organizations to educate individuals regarding the importance of jury service.
 - Generate a culture of ownership and a commitment to participation in jury service and overcome negative attitudes about jury service.
 - Employ the use of frank and direct engagement of negative feelings about the legal system, law enforcement, and criminal justice.
- 

Public Education & Engagement

- Education effort targeted to individuals convicted of felonies to assist the individuals understand the restoration of their rights to serve as trial jurors.
- Updating juror orientation videos.



Maximizing the use of summoned jurors & ensuring the collection & analysis of data

- Transitioning from a 2-step to 1-step summons process.
- Collecting and analyzing juror data to optimize jury operations and ensure courts are utilizing best practices.
 - Best practices checklist.
 - Statewide use of National Change of Address database.
 - Online portal for data collection.
- Periodic analysis of data to assess inclusiveness of master jury list and evaluate effectiveness of summoning procedures (ACJA 5-203(J)).

Court Messaging to Jurors

- Using text messaging/push notifications with information.
- Changing postponement policy.
- Pre-screen process.
- Use juror response data, jury utilization data, and juror exit survey data to optimize jury operations, including the use of jurors.



Overcoming Barriers to Service

- Increase daily rate of pay to a rate equal to 4 times minimum wage (approx. \$49.00/day).
- Recommend amending A.R.S. § 21-221(B) to permit compensation for any juror who is required to and does appear in-person at the courthouse for jury service.
- Reduce lengthy trial fund eligibility from Day 6 to Day 4.
- Recommend amending A.R.S. § 21-221 to permit additional payments to qualified jurors who require dependent care to serve on a jury.
- Encourage the use of technology in jury selection.

Who will pay for this?

- A combination of filing fees, court budgets, and employers.
- Increase the lengthy trial fund-associated filing fee to \$21.00 from \$15.00.
- Proposed legislation to allow working jurors to receive compensation from their qualified employers for Day 1 through Day 3 of jury service and receive a tax credit.
- Adjust the formula for the Lengthy Trial Fund reimbursement (30% of the minimum rate paid to each eligible juror paid by the local court and the remainder paid by the Lengthy Trial Fund).

Continuing Work: Statewide Jury Selection Workgroup

Elimination of peremptory challenges - further directive from Chief Justice

- Review of criminal and civil rules of procedure;
- Best practices; and
- Training.

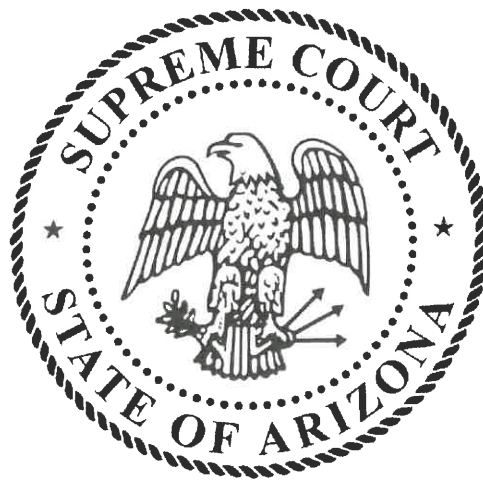
Supplemental Report due November 1, 2021

For more information

Report and Recommendations: Task Force on Jury Data Collection, Practices and Procedures (azcourts.gov)

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Report and Recommendations

*Arizona Task Force on Jury Data Collection,
Policies, and Procedures*

October 4, 2021

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Members

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Report and Recommendations

Arizona Task Force on Jury Data Collection, Policies, and Procedures

Executive Summary

Creation and Charge of the Task Force

Arizona Supreme Court Chief Justice Robert Brutinel issued Administrative Order No. 2020-35¹ (“AO 2020-35”), establishing the Task Force on Jury Data Collection, Practices, and Procedures (“the task force”), on March 10, 2021. The administrative order created the task force in furtherance of Arizona’s history of jury service and jury management improvements and emphasized a renewed focus on the need to ensure juries fairly represent a cross-section of the local community in which they assemble. Moreover, the task force’s work was focused not only on the importance of jury service, the juror summoning process, and jury selection practices, but how those topics intersect with one another and impact the public trust and confidence in the judiciary.

The administrative order charged the task force with exploring and making recommendations on seven topics:

1. Data collection.
2. The adequacy of current source lists used to summon jurors and whether the use of additional source lists would be beneficial.
3. Ways to increase the percentage of jurors who respond to their jury summons and reduce the barriers to jury service.
4. Whether increasing juror pay would allow more potential jurors to serve.

RECOMMENDATIONS

1. Improving the public's understanding and perception of jury service
2. Maximizing the use of summoned jurors and data collection
3. Overcoming barriers to jury service
4. Minimizing the potential for discrimination in the jury selection process

¹ Ariz. Sup. Ct., Admin. Order No. 2021-35, <https://www.azcourts.gov/Portals/22/admorder/Orders21/2021-35.pdf?ver=2021-03-10-130444-153>. See *infra* Appendix A.

5. Whether the reduction in the number of peremptory challenges should be continued for a period of up to three years to reduce the number of prospective jurors required for the impending jury trial backlog during post-pandemic recovery.

6. Whether peremptory challenges of jurors systemically reduce the representation of minorities and whether changes to the peremptory challenge rules should be made.

7. Content for public education information aimed at increasing awareness of the jury service process and the value of jury service.

Administrative Order 2020-35 directed the task force to submit a report and recommendations to the Arizona Judicial Council (“AJC”) by October 1, 2021. During the time the task force was performing its evaluation and preparing recommendations, the Arizona Supreme Court considered and ultimately adopted a rule petition to eliminate peremptory challenges. Given this change to the jury selection process, the Arizona Supreme Court requested that this task force evaluate whether additional rule revisions may be necessary or appropriate. The task force’s recommendations regarding this recent request will be submitted in a supplemental report issued in November 2021.

Overview of this Report

This report begins with a description of the task force membership, an explanation of the process used to develop recommendations, and a summary of the recommendations. The report discusses the history of jury-related improvements in Arizona and the context under which this task force conducted its work. Detailed reports provide the core foundation for the recommendations to round out the body of the report. The report concludes with appendices containing reference documents and recommended statutory and related Arizona Code of Judicial Administration (“ACJA”) changes.

The Task Force and the Task Force Process

Members of the task force represent a variety of perspectives in jury selection and jury service. Members include criminal and civil lawyers, members of the public, rural and urban judges, court administrators, clerks of court, and jury commissioners from general and limited jurisdiction courts.

After its formation on March 10, 2021, the task force members established a timeline to evaluate every step in selecting a jury, ranging from an assessment of the public’s willingness to participate in jury service through and including the potentially discriminatory use of peremptory challenges. In April 2021, the task force met with Arizona and national experts to learn about various aspects of jury service and jury management. Thereafter, the task force met monthly, and task force members divided into three workgroups that formed around five of the seven charges of the task force. Those three workgroups were referred to as: (1) Source Lists and Response Rates Workgroup; (2) Juror Pay and Lengthy Trial Workgroup; and (3) Barriers to Service and Public Education Workgroup. Between monthly meetings of the task force, workgroups researched, studied, investigated, developed, and refined recommendations addressing various aspects of jury operations and jury management. In addition to analyzing data and meeting with experts on various topics, workgroup members evaluated procedures in other courts and

contacted court personnel across the country to discuss initiatives to improve jury operations and diversity of juries.

During meetings of the entire task force, members of each workgroup presented their ideas and recommendations, answered questions, and often were directed through comments from the full task force to continue analyzing and refining ideas and proposals. This process allowed input from different perspectives, avoided communication gaps, accounted for overlap among workgroups, ensured the workgroups were not working in isolation, and recognized that members of one workgroup may have substantial interest in and knowledge that would help the efforts of another workgroup. Workgroup members were invited to attend meetings of other workgroups when interested or when a member's expertise on a topic might be key to discussions and ideas.

Because of the nature of the topic of peremptory challenges, the task force by and large did not explore that subject via workgroup, but rather discussed it as a whole task force. The exception to this was a limited scope workgroup formed to evaluate the temporary restriction on peremptory challenges and generate possible recommendations that went beyond mere continuation or an immediate end to the temporary restrictions.

"Representative government and trial by jury are the heart and lungs of liberty."



John Adams

Summary of Task Force Recommendations

Although much of the analysis and research occurred within the individual workgroups, the final recommendations were the result of task force decisions. They are organized using four areas of focus: 1) Recommendations to improve the public's understanding and perception of jury service; 2) Maximizing the use of summoned jurors and ensuring courts collect and analyze data to verify that summoned jurors represent a fair cross-section of the community; 3) Overcoming barriers to jury service; and 4) Minimizing the potential for discrimination in the jury selection process. The recommendations are summarized as follows:


I. Recommendations to improve the public's understanding and perception of jury service.

Jury service is often perceived by the public as a time-consuming and unnecessary responsibility. The task force reviewed and approved numerous recommendations intended to help the public better understand the importance of jury service, accept ownership in our justice system, increase participation in jury service, and reduce misperceptions.

- A. The task force recommends launching a statewide public information campaign to generate a culture of ownership of our justice system, promote the importance of participation in jury

service, increase the public's willingness to participate in jury service, and attempt to confront and overcome negative attitudes about jury service. This includes:

1. Branding the campaign "Fair Because I Was There."
 2. Confronting negative feelings about the legal system, law enforcement, and criminal justice.
 3. Contacting community groups, public interest organizations, and tribal governments to learn what outreach would be most helpful and effective in increasing participation in juries.
 4. Creating forums for direct engagement with the public to discuss jury service.
 5. Addressing common misperceptions regarding barriers to jury service.
- B. The task force also recommends a robust education effort targeted to individuals convicted of felonies to assist the individuals in understanding the restoration of their right to serve as trial jurors.
- C. The task force also recommends that videos used during juror orientation, including the video prepared by the Administrative Office of the Courts ("AOC"), be updated to remind individuals of the importance of jury service and help explain the jury selection process.



II. Maximizing the use of summoned jurors and ensuring courts collect and analyze data to verify that summoned jurors represent a fair cross-section of the community.

The recommendations of the task force are interrelated and drafted to minimize the impact on court budgets while maximizing juror use. For example, to help offset the financial impact of increasing juror compensation, the task force proposes procedural changes in the summoning process to improve juror utilization, decrease costs, and increase the representativeness of jury panels. The task force also recommends the collection and analysis of data to help courts better understand and improve their summoning process and juror utilization. The task force recommends:

- A. That juror response data, juror utilization data, and juror exit survey data be collected and analyzed regularly by courts to optimize jury operations and juror utilization.
- B. All courts transition from a 2-step to a 1-step summons process. Experts from the National Center for State Courts ("NCSC") should provide technical support, and each court should be allowed to designate a conversion timeline commensurate with the jury and trial management practices of the court.

- C. A series of changes to further optimize jury operations as well as to ensure that all courts are engaged in practices that facilitate meeting the constitutional obligation to provide a representative jury.
 - a. Analyzing juror biographical and demographic data to assess the representativeness and inclusiveness of master jury lists.
 - b. Creating a best practices checklist for collecting juror demographic and biographical information, specifically gender, ethnicity, and race.²
 - c. Employing an online portal for collecting, extracting, and analyzing juror data.
 - d. After the first year of statewide collection of biographical data (gender, ethnicity, race), revisiting the responses available for each category to determine whether to expand, change, or allow choice of more than one response.
 - e. Implementing statewide use of the National Change of Address (NCOA) database or similar national service to reduce the volume of undeliverable mail and save court resources.
- D. Using text messaging/push notifications for individuals who have opted in for jury service reminders, and, if possible, including a link with court location and parking information.
- E. Changing the current automatic postponement policy to allow jurors to pick a date within a specific timeframe for jury service to enable choice of a future service date and reduce the number of excusals sought by prospective jurors.
- F. Implementing a pre-screen process for jurors to communicate hardship and bias. In counties that select juries by case, the pre-screen process or questionnaire should be case specific. Use of a pre-screen process is intended to reduce the number of jurors who experience undue hardship from appearing at court and immediately being assessed as unable to serve.

III. Overcoming barriers to jury service.

Many citizens are unable to serve as jurors or even report for jury service because of financial hardships. The task force considered common barriers to service expressed by Arizona jurors and explored initiatives of other courts across the country that are attempting to overcome similar barriers. In addition, multiple workgroups researched and evaluated the compensation provided to jurors who appear for selection and for those ultimately selected to serve. The recommendations in this section are organized into three categories: amendments to the statutory minimum compensation and reimbursement amounts; amendments to when jurors are eligible to receive

² See *infra* Appendix B.

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compensation; and efforts to increase and expand juror compensation and reimbursements or reduce other barriers to jury service. The task force recommends:

A. Amendments to the statutory minimum compensation and reimbursement amounts.

1. An increase in the daily juror stipend to a rate equal to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar.³
2. Amend the Lengthy Trial Fund statute, A.R.S. § 21-222, to increase the minimum amount of earnings replacement or supplemental earning a petit juror receives to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar.
3. To further minimize the financial impact of the increased cost for courts, the task force recommends amending the formula for Lengthy Trial Fund reimbursements to courts to require 30% of the minimum rate paid to each eligible juror (defined as four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar) be paid by the local courts, with the remainder reimbursed from the Lengthy Trial Fund.

B. Amendments to when jurors are eligible to receive compensation.

1. Amend A.R.S. § 21-221(B) to delete the last sentence that excludes juror pay for the first day of service if a juror is dismissed without being sworn and seated for jury service.
2. Amend A.R.S. § 21-222 to reduce the minimum days of service eligibility for reimbursement by the Lengthy Trial Fund from 6 days to 4 days.

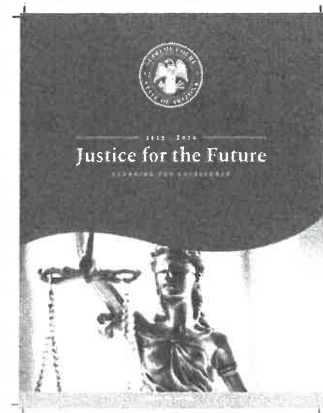
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Many citizens are compelled to perform their civil duty of jury service. We need to make sure everyone who is eligible to serve on a jury understands the importance of their time and service in this essential court function.

Justice for the Future

*Strategic Agenda
Judicial Branch*

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³ Under the current statutory rate, the daily minimum amount is four times \$12.15 per hour or \$49.00 per day of jury service. See A.R.S. § 23-363.

C. Other recommendations related to juror compensation and reimbursements, or to reduce other barriers to jury service.

1. That legislation be proposed to allow working jurors to receive compensation from their qualified employers for Day 1 through Day 3 of jury service. This proposal suggests employers pay employees regular wages or salary for time missed from work for jury service through the third day of jury service (Days 1-3). Legislation would include a tax credit for eligible employers. The task force recommends that businesses or employers with 20 employees or less have discretion to choose whether to pay employees for jury service.
2. Amend A.R.S. § 21-221, the daily juror stipend statute, to permit courts to provide additional payments to qualified jurors who require dependent care to serve on a jury.
3. Further, amend the Lengthy Trial Fund statute to cover this dependent care stipend for all days of service when the juror qualifies for and seeks reimbursement under the Lengthy Trial Fund.
4. To minimize the financial impact of the increased compensation and reimbursement recommendations above, increasing the \$15.00 Lengthy Trial Fund-associated filing fee to \$21.00.
5. In addition, the task force encourages the use of technology in jury selection and potentially for jury service in certain types of cases. To minimize the barriers for individuals who do not have appropriate devices or lack private space to participate in jury service, the task force recommends the creation of hubs in public places such as libraries or community centers to facilitate remote participation.

IV. Minimizing the potential for discrimination in the jury selection process.

After extensive discussion about whether peremptory challenges serve any meaningful purpose in today's environment, whether peremptory challenges are used discriminatorily, and whether existing remedies, such as *Batson* challenges, are sufficient to overcome any discriminatory motivations in the use of peremptory challenges, the task force voted 12-4 to recommend that the Arizona Supreme Court consider elimination of peremptory challenges and set forth policy, procedures, and, if necessary, a more robust rule to secure better for cause strikes. As mentioned above, prior to issuance of this report, the Arizona Supreme Court adopted a rule revision, effective January 1, 2022, to eliminate peremptory challenges during jury selection. Although a supplemental report analyzing potential revisions to existing rules will be submitted on November 1, 2021, this report includes recommended procedures that courts and judges may use to obtain candid information from jurors to better assess requests to remove a juror for cause, including:

- A. Using juror questionnaires such as the online tools being used in Maricopa and Yavapai counties.

- B. Allowing sufficient and meaningful time for the court and the parties to question prospective jurors.
- C. Training for judicial officers and jury management officials on tools for more effective practices for improved use of for cause strikes.
- D. Training for judicial officers and attorneys around implicit bias and its impact on jury selection.

Prior to the Arizona Supreme Court's decision to eliminate peremptory challenges, the task force voted 12-4 to recommend to the Arizona Supreme Court that it consider abolishing peremptory challenges. The task force had also voted to recommend the continuation of the administrative order restricting the number of peremptory challenges for one year. In connection with that vote, the task force recommended that the presiding superior court judges be given discretion to reinstate the number of peremptory challenges authorized by existing court rules.

*"Through fidelity to the rule of law,
faithful adherence to ethical standards,
and equal treatment of all individuals, our
judicial system fulfills its constitutional
obligation and earns the public's trust."*

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Jury Operations and Jury Management

History of Arizona Jury-Related Reforms

The first comprehensive review of Arizona's jury system was initiated in 1993 under the Arizona Supreme Court Committee on More Effective Use of Juries. That committee submitted two reports with recommendations between the fall of 1994 and the summer of 1998.⁴ The Supreme Court again took up a study of jury practices in 2001 under the Committee to Study Jury Practices and Procedures.⁵ The 2001 committee noted that a number of the recommendations from the earlier committee had not been implemented and re-recommended that several of those efforts be pursued anew. Both efforts resulted in review and recommendations that substantially overlap with the charge and recommendations of this task force, including but not limited to:

- Review of juror source lists,
- Recommendations on improving juror compensation laws to reduce the exclusion of many qualified jurors from service,
- Recommendation that courts convert to the 1-step jury management process,
- Active engagement in the study and analysis of jury summoning and reporting practices to improve diversity, improve juror utilization rates, and ensure efficient use of jurors,
- Recommendation to improve upon juror postponement policies and practices,
- Recommendations directed at efforts to engage and inform the public about jury service, through a statewide public relations campaign,
- Engage with jurors reporting to the courthouse on jury selection processes and wait times,
- Solicit juror feedback on the jury service experience, and
- Explore pending and other potential changes to the use of peremptory challenges.

The task force notes that several of its recommendations, which also were made by prior committees, often were adopted in the past under a framework of optional or discretionary implementation by local courts. As prior committees observed, when a statewide mandatory implementation plan is not in place or where courts are given an option to adopt a recommendation, change often does not occur. Against this background, the task force suggests that there be a more coordinated and supported effort to implement any of the recommendations herein that are adopted by the Arizona Judicial Council and pursued by the Supreme Court and the AOC.

⁴ ARIZ. SUP. CT. COMM. ON MORE EFFECTIVE USE OF JURIES, JURORS: THE POWER OF 12 (1994);

ARIZ. SUP. CT. COMM. ON MORE EFFECTIVE USE OF JURIES, JURORS: THE POWER OF 12, PART TWO (1998).

⁵ ARIZ. SUP. CT. AD HOC COMM. TO STUDY JURY PRACS. AND PROCS., FINAL REPORT AND RECOMMENDATIONS (2002).

Overview of Jury Operations and Jury System Management

Jury operations are often viewed as an isolated activity when, in reality, jury operations affect and are affected by other areas of court operations, including trial scheduling, fiscal resources, technology, facilities, and public outreach and education. Jury operations focus on daily tasks, such as juror qualifications, summoning, managing requests for excusal and postponement, orientation, juror pay, and other juror specific needs. Conversely, jury system management focuses on how jury operations are serving the needs of the court, what the system's strengths and weaknesses are, and what strategies might be employed to address any weaknesses. A well-run jury system is one that achieves four objectives:

1. Secures an adequate number of prospective jurors from which to select juries;
2. Ensures the jury pool reflects a fair cross-section of the community;
3. Manages court resources, including trial costs and jurors' time, efficiently; and
4. Treats jurors with dignity and respect.⁶

The task force's recommendations were drafted with these objectives in mind and how these objectives overlap with the charge of the task force, as well as the standards of jury management set forth in the Arizona Code of Judicial Administration. As the task force was finalizing its report it also considered how the Arizona Supreme Court's abolition of peremptory challenges impacted jury operations and jury management.

Current Climate and Impact of Recent Innovations

The Supreme Court's recent renewed focus on jury issues is an integral part of the Court's Strategic Agenda for 2019-2024, *Justice for the Future: Planning for Excellence*.⁷ It also coincides with: increasing focus on the need for public trust and confidence in the courts and the rule of law; a national effort to combat explicit and implicit racial prejudice within the justice system; and a recommitment to examine what systemic change is needed to make equality under the law an enduring reality for all.⁸ The task force also was formed and conducted its work in the shadow of the immense impact of the COVID-19 public health crisis. To remain open but safe, courts adopted a wide range of innovations, which included changes to policies on juror excusal and postponement, how jurors reported and appeared for jury selection, how courts conducted *voir dire*, reductions on peremptory challenges, and new case management practices to resolve pending cases while minimizing the risk that came from groups of persons being gathered in a single location such as a jury assembly room, a courtroom, or a jury deliberation room. The task force used court innovations during the public health crisis as a springboard for many of the ideas and recommendations set forth in this report.

⁶ PAULA HANNAFORD-AGOR, AN OVERVIEW OF CONTEMPORARY JURY SYSTEM MANAGEMENT 1, (2011).

⁷ ARIZ. SUP. CT., STRATEGIC AGENDA 2019 - 2024 JUSTICE FOR THE FUTURE: PLANNING FOR EXCELLENCE 19 (2019).

⁸ CONF. OF CHIEF JUSTS. & CONF. OF STATE CT. ADM'RS, RESOLUTION 1: IN SUPPORT OF RACIAL EQUALITY AND JUSTICE FOR ALL (2020).

Foundation for the Recommendations

I. Recommendations to improve the public's understanding and perception of jury service.

Through fidelity to the rule of law, faithful adherence to ethical standards, and equal treatment of all individuals, our judicial system fulfills its constitutional obligation and earns the public's trust. However, courts continue to grapple with the public's perception and the possible reality of inequality in our justice system. Recent events in our country have placed a much-needed spotlight on the importance of equality within our judicial system and confronting bias, whether explicit or implicit.

In jury selection, litigants, lawyers, and judges expect members of the jury panel to openly discuss their candid, deeply held, and potentially controversial views on issues relevant to the case on trial. Jury selection may involve questioning jurors regarding their views on race and ethnicity, interactions with and opinions regarding law enforcement, drugs, guns, and many other topics often prohibited during gatherings with extended members of an individual's own family. The topics discussed in the courtroom during jury selection are often difficult and sensitive, yet critically important to securing a fair and impartial jury. The task force recommends a public education campaign that embraces the realities of jury service, educates the public regarding the importance of jury service, and confronts the difficult issues regarding inequality in our justice system with candor and compassion.

Research suggests "that the experience of jury service leads to increased civic engagement and political participation."

John Gastil et. al., The Jury and Democracy: How Jury Deliberation Promotes Civil Engagement and Political Participation (2010)

Launching of a statewide public information campaign, "Fair Because I Was There" to generate a culture of ownership in our justice system, promoting the importance of participation in jury service, and attempting to confront and change negative attitudes about jury service.

The task force recommends a statewide campaign organized at the state level but implemented largely at the local level. The task force suggests branding this educational campaign "Fair Because I Was There."⁹ This slogan goes to the heart of what the campaign is directed at communicating – the more that people participate in the jury system, the more they can actively

⁹ The task force, through pro bono assistance of a local law firm, researched the availability of this phrase. No federal registration of "fair because you were there" was found. An anecdotal instance of a court in another state using a similar phrase, but not the same phrase, in this instance in the Milwaukee state court, "It was fair because I was there" in 2015 was identified in the search. Unregistered out-of-state local uses should not have any effect on the use of the phrase in Arizona.

participate in a key aspect of our democracy and actively contribute to equality in our judicial system.

➤ ***Conducting outreach to community, public interest organizations, and tribal governments to learn what kinds of communications and information would be most helpful and effective in increasing participation in juries.***

The task force recommends outreach to various groups and organizations to identify targeted methods of increasing participation in juries and engaging the public to confront negative perceptions of our judicial system. Communities and organizations noted by the task force include, but are not limited to, tribal governments, business organizations, churches, chambers of commerce, Chicanos por la Causa, the Arizona Black Bar, Los Abogados, Puente Human Rights, Poder in Action, Black Lives Matter, the NAACP, Mass Liberation Arizona, the Native American Bar Association of Arizona, and the Arizona Asian American Bar Association. Working with the community in this way, the campaign materials themselves, as well as the medium and manner of sharing them, will be more effective. Moreover, working with communities and organizations demonstrates the judiciary's dedication to ensuring equality in the legal system for all. The task force also proposes the campaign help educate the public about efficiencies in jury service to reduce misperceptions about serving on a jury and to explain resources available to jurors to minimize the financial burden of jury service.

➤ ***A robust education effort targeted to individuals convicted of felonies to assist the individuals in understanding the restoration of their right to serve as trial jurors.***

During jury selection, judges routinely explain the qualifications of jury service: a juror must be a citizen of the United States, a resident of the county, and must not have been convicted of a felony unless the person's civil rights have been restored. Often, individuals convicted of felony offenses, either in Arizona or elsewhere, lack information regarding the restoration of their civil right to serve as jurors. The task force recommends that individuals who may have been temporarily disqualified from jury service understand the path to regaining qualified juror status. The task force recommends a robust education system to inform convicted felons about the process of restoration of their right to serve on juries, including a recommendation that probation services provide information to persons under any level of supervision for a felony.


➤ ***Updates to the videos used during juror orientation, including the video prepared by the AOC, to remind individuals of the importance of jury service and help explain the jury selection process.***

Finally, the task force recommends updating and refreshing the statewide video used during jury orientation to remind jurors of the importance of jury service and to help explain the jury selection process. The task force recommends the video be organized in a manner that allows each court to provide information regarding its unique jury selection procedures or be tailored to changing jury selection procedures, such as use of remote juror selection methods.

II. Maximizing the use of summoned jurors and ensuring courts collect and analyze data to verify that summoned jurors represent a fair cross-section of the community.

The first objective of effective jury system management is to secure an adequate number of prospective jurors from which to select juries. Jury managers must make reliable estimates of the number of qualified jurors that will need to report to the courthouse to secure an empaneled jury. This requires factoring in the adequacy of source lists, movement of persons in and out of a jurisdiction, response rates to summonses, rates of excusals and requests for postponement, impacts of publicity, the size of the jurisdiction on the jury pool, length of a trial, and the hardships jurors face. As such, it is imperative for jury managers to collect and analyze data related to various aspects of the jury system to minimize the over- or under-summoning of jurors.

Jury yield “is the term used to describe the number of jurors who are qualified and available for jury service on the date summoned expressed as a proportion of the number of jury summonses mailed.”¹⁰ Jury yield is used by jury managers to estimate the number of summonses to mail to secure an adequate number of jurors from which to select a jury. It is also a measure of system efficiency; therefore, it is in the court’s best interest, from a costs and efficiency perspective, to maximize jury yield. The components of jury yield believed to offer the most potential for effective control are the choice of 1-step versus 2-step jury operations, undeliverable rates, non-response and failure to appear rates, and excusal rates. All of these fell within the charge of the Source List and Response Rate Workgroup and the task force’s general directive. Therefore, the following recommendations relate directly to improving juror yield and juror utilization.

 ***Recommend that juror response data, juror utilization data, and juror exit survey data be collected and analyzed regularly by courts to optimize jury operations, including the use of jurors.***

Effective jury systems manage court resources efficiently. Jury yield, as noted above, is one measure of an efficient jury system, but as important, and a focus of the task force, is how effectively a court uses jurors. Arizona has long required courts to monitor their jury systems, but when data was requested from courts, there was inconsistent availability of basic data and information on the performance of each court’s jury system. Earlier committees tasked with considering jury-related reforms and analysis of Arizona jury management systems identified the importance of statewide data collection and analysis and uniform jury management practices.¹¹ In particular, they noted the importance of jury management standards, including the practice of regularly collecting and analyzing data regarding the performance of the jury system.

¹⁰ HANNAFORD-AGOR, *supra* note 6, at 3.

¹¹ ARIZ. SUP. CT. AD HOC COMM. TO STUDY JURY PRACS. AND PROCS., *supra* note 5 at 12-13.

Arizona first approved jury management standards in 1992.¹² Over time, as those standards were modified and as other jury selection practices adopted both nationally and in Arizona impacted those standards, the Court sought codification of the standards. In 2003, Arizona first codified those standards in ACJA § 5-203, which states in relevant part:

3. Monitoring the jury system. Courts shall periodically monitor the performance of their jury system and should collect and analyze information regarding the performance of the jury system on a regular basis in order to ensure:

- ...
- c. The effectiveness of qualification and summoning procedures;
- d. The responsiveness of individual citizens to jury service summonses;
- e. The efficient utilization of jurors;
- f. The cost effectiveness of the jury system; and
- g. The court's ability to meet jurors' needs.¹³

The workgroup's recommendations, as adopted by the task force, reinforce the importance of these standards and set forth a renewed effort to ensure courts are engaged in practices that facilitate meeting the constitutional obligation to provide a representative jury while being respectful of citizens who are summoned for jury service. The task force notes that jurors are compelled to jury service, and efforts to improve jury service through the gathering and analyzing of data should be viewed in that light. The task force recognizes that the recommendation is not new or novel, but rather a reinforcement of existing requirements and a renewed effort by courts to meet the obligations of actively monitoring their jury operations. The task force chose to emphasize three categories of data.

Juror Response Data

A juror response is any response received from a juror regarding their juror summons, whether that response is in the affirmative or request for excusal, disqualification, or postponement. A response should not be confused with reporting, which is the appearance of a juror on a specified date of service. Collecting and tracking this information will enable courts to determine a summoning rate that is appropriate to provide a sufficient number of jurors for a trial while causing the least amount of disruption to the citizens of the community. Courts should collect data on:

- the number of summonses returned as undeliverable;
- the number of prospective jurors disqualified from service;

¹² *Id.* at 13.

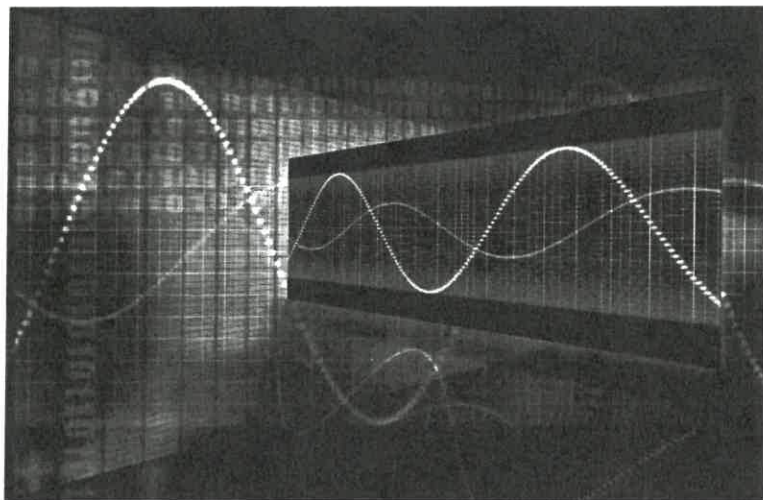
¹³ ARIZ. CODE JUD. ADMIN. § 5-203(J)(3)(c) – (g) (2009).

- the number of jurors who qualified to be excused from service (both permanently and for that summons period only);
- the number of jurors who requested postponement; and
- the number of jurors who fail to respond to and further failed to appear to the court as ordered by their summons.

These numbers, combined and tracked over time, will give courts the most accurate estimate of the number of prospective jurors who, when issued summonses, will not be available for service. If, for example, a court tracks these numbers and establishes that on average 50% of summonsed jurors will not be available for service, the court can then use that figure to issue an appropriate number of summonses to achieve the desired yield for the day. Establishing these figures should allow a court to reliably meet the needs of a trial and inconvenience as few members of the community as possible.

Juror Utilization Data

“Juror utilization” is the measure used to describe how well courts use their supply of jurors. There are three separate components of juror utilization: the percentage of jurors who are to report to a courthouse for service, the percentage of jurors who are sent to a courtroom for jury selection (the panel), and the percentage of the panel that is ultimately needed to select and seat a jury.¹⁴ It is recommended that 90% of jurors be “used” in each component of juror utilization.¹⁵



The task force recommends that courts optimize jury operations by gathering data on the utilization of jurors by collecting the following information about reporting jurors who are:

1. Never Assigned (not assigned to panel or sent to courtroom; remained in the jury assembly room or failed to appear after check-in);
2. Utilized in Incomplete Jury Selection (assigned to a jury panel and sent to courtroom but a jury was not sworn);
3. Challenged or Removed in Completed Jury Selection (number excused for cause or hardship);

¹⁴ HANNAFORD-AGOR, *supra* note 6, at 15.

¹⁵ *Id.*


4. Not Selected, Challenged or Removed in Completed Jury Selection (number assigned but not questioned or needed to empanel a jury when a jury was sworn; known in some jurisdictions as mathematically ineligible);
5. Selected in Completed Jury Selection (number selected as juror or alternate).

By collecting and evaluating this information over a period of time, courts can determine whether a high number of jurors are routinely reporting to the court needlessly on the day of service and can adjust summoning and reporting instructions accordingly. While it is important to acknowledge that things happen outside of the control of the court and jurors may be brought in only to have a trial go away at the last minute, it is equally important to respect the imposition of jury service on citizens' lives and make efforts to only bring in only the number of jurors that will be needed. Frequent high numbers of Never Assigned or Not Selected, Challenged or Removed jurors may indicate that the court is instructing too many jurors to appear for service. According to the NCSC, "poor utilization of jurors' time also imposes an indirect cost on public trust and confidence in the courts."¹⁶

Exit Survey Data

Courts must take the important step of gathering information from jurors, post service, regarding their experiences as prospective or empaneled jurors. Courts can analyze this data to identify areas for improvement, which in turn will help increase confidence in the judiciary and promote positive perceptions of jury service. It is important that questions posed in an exit survey be easily measurable and designed to elicit information that is actionable, and that courts work to resolve issues consistently identified by jurors.

Efforts should be made to gather this information from every juror who reports for service, regardless of whether the juror is seated on a trial. Survey software and the gathering of juror contact information during the summons response stage should simplify this data collection. Administering these surveys in an electronic format also offers the benefits of ease and speed to collect and analyze responses, especially in today's highly virtual environment where data shows that 93% of American adults use the internet.¹⁷

 ***Courts move from a 2-step to 1-step summons process. The transition should be supported by experts from the National Center for State Courts and courts should be allowed to establish the timeline for conversion that is commensurate with the jury and trial management practices of the court.***

¹⁶ NAT'L CTR. FOR STATE CTS., JURY MANAGERS' TOOLBOX: BEST PRACTICES FOR EFFECTIVE JUROR UTILIZATION 4 (2009).

¹⁷ *Demographics of Internet and Home Broadband Usage in the United States*, PEW RSCH. CTR. (Apr. 7, 2021) <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

In Arizona, only the superior courts in Maricopa and Pima counties use the 1-step jury system for summoning trial juries. As of 2007, most state trial courts operate their jury systems as a 1-step qualification and summoning process.¹⁸ NCSC estimates that overall jury yield for 1-step jury systems is 52% — roughly 12% higher than the yield for 2-step systems.¹⁹ Overall jury yield can be increased by converting to a 1-step summoning and qualification process.

In 2-step courts, the court first sends qualification questionnaires to persons on the master jury list to determine eligibility to serve, based on the statutory juror qualification criteria.²⁰ The names of the persons who respond and meet the criteria are then placed on a qualified list from which the court can later randomly select persons to summon for service.²¹ Depending on the frequency of conducting the qualification process and the frequency of trials in a jurisdiction, there may be many months between return of the qualification questionnaire and the mailing of a summons. This means 2-step courts have two types of jury yield—the qualification yield (number of persons qualified for service expressed as a proportion of the number of qualification questionnaires mailed) and the summoning yield (number of qualified jurors who are available for service expressed as a proportion of jury summonses mailed).

One-step courts, in contrast, combine the qualification and summoning step in the same mailing with instructions to return the qualification questionnaire for processing before reporting for service. One-step courts permit jurors to postpone their service if the juror is otherwise eligible to serve but unavailable on the summoned date. If a 1-step court determines a person is ineligible for service, it notifies the prospective juror they are excused from reporting. Benefits of the 1-step process include the elimination of both the need to send a second mailing summoning the juror and re-verifying the juror's information and qualifications.

Literature reviewed by the task force also indicates that 2-step qualification and summoning systems tend to be less efficient, often resulting in duplicative efforts by jury staff to manage undeliverable jury summonses and disqualified, exempted, and excused jurors during the later—sometimes much later—summoning stage of jury selection. The 2-step qualification and summoning systems also require multiple mailings, which can increase printing and postage costs for courts. Some estimates indicate these costs are 25% to 50% higher for 2-step jury systems. For example, if a 1-step court mails and processes 1,000 summonses (assuming a 52% overall jury yield)²², it would result in 516 qualified and available jurors. A 2-step court,

¹⁸ NAT'L CTR. FOR STATE CTS., JURY MANAGERS' TOOLBOX: CONVERTING FROM A 2-STEP TO 1-STEP JURY SYSTEM 1, (2009).

¹⁹ *Id.*

²⁰ See ARIZ. REV. STAT. ANN. § 21-201 (2008).

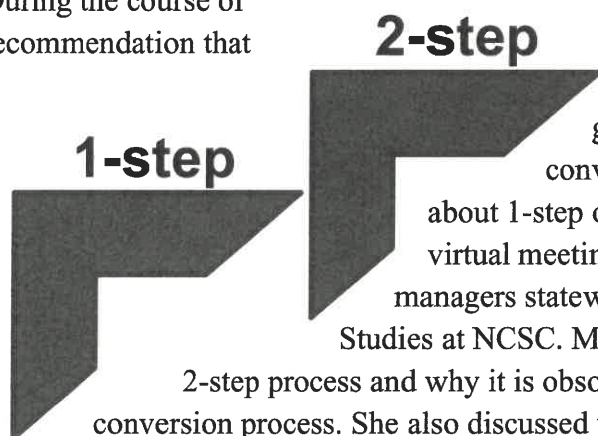
²¹ Paula L. Hannaford-Agor & Nicole L. Waters, *Tripping Over Our Own Feet: Two Steps Are One Too Many in Jury Operations*, in FUTURE TRENDS IN STATE COURTS 2010, 112, 113 (Carol R. Flango et. al. eds., 2010) (Not all persons respond to this mailing, and an average of 9.2% of all jury-related mailings are returned as “undeliverable as addressed.”).

²² NAT'L CTR. FOR STATE CTS., *supra* note 18, at 1.

however, would need to mail and process 1,280 qualification questionnaires and then later process and mail 778 summonses to yield the same number of available jurors.²³

NCSC issued a report in 2010 indicating that the “most striking inefficiency of 2-step jury systems is the proportion of jurors summoned from a qualified list who are subsequently found ineligible or unavailable for jury service.”²⁴ The report, using data from the *State-of-the-States Survey of Jury Improvement Efforts*, indicated an average of 7.5% of persons summonsed in 2-step courts were found to be disqualified for service, even though they were initially qualified after completing the eligibility questionnaire previously. Another 9.2% of summonses in the 2-step courts were returned by the U.S. Postal Service marked “undeliverable as addressed,” although the earlier qualification questionnaire had reached the juror at those addresses. The report estimated that these two factors, along with the average rate of failure to appear, led to an overall jury yield 9% to 14% lower for 2-step courts compared to 1-step courts.

During the course of recommendation that



the task force’s discussion of the all courts in Arizona convert to the 1-step process, requested that NCSC be invited to give a presentation on the pros and cons of conversion to a 1-step process and answer questions about 1-step operations. Staff to the task force arranged a virtual meeting with all jury commissioners and jury managers statewide and Paula Hannaford-Agor, Director of Jury Studies at NCSC. Ms. Hannaford-Agor explained the history of the

2-step process and why it is obsolete and covered the pros and cons of the conversion process. She also discussed that conversion should occur court by court, considering county size and unique procedures and practices, and that it requires a phased approach for implementation. Ms. Hannaford-Agor then gave this same presentation to the task force at its August 2021 meeting. Several elected Clerks of Court who are also the jury commissioner for their superior court as well as some of jury staff from the superior courts attended that task force meeting and had an opportunity to further comment on the recommendation. Despite the position of the NCSC, the majority of elected Clerks of Courts from rural counties opposed the recommendation to convert to 1-step jury systems.

The task force took into consideration the concerns of the elected Clerks, jury commissioners, and jury staff—concerns about staffing adjustments, resource availability, current summoning practices, and variations in frequency of trials among the courts that use the 2-step process. The task force also considered information about the current trial backlogs and continued challenges with resuming trials during the ongoing COVID-19 public health crisis, recent improvements to

²³ *Id.*

²⁴ Hannaford-Agor & Waters, *supra* note 21, at 112-13.

the jury management software program used by 14 of the 15 counties, and a recent administrative order²⁵ requiring courts to ask for and collect biographical data from persons reporting for jury service. The task force reviewed several resources as part of its work in drafting, deliberating, and voting on the recommendation. Finally, the task force recognized that prior jury-improvement committees have recommended the conversion from 2-step to 1-step systems and that only two courts have voluntarily done so over the course of several decades.²⁶

The task force notes its purpose, according to the administrative order creating it, was to address juror participation and the need to ensure juries represent a fair cross-section of the community. This specifically included exploring and making recommendations on ways “to increase response rates to summonses for jury service and reduce barriers to jury service.” Although benefits to the courts and workload and cost reduction were imperative considerations for the task force, members agreed the charge asked the task force to review Arizona’s jury processes from the perspective of hardships on jurors, not courts. It is axiomatic that the fewer requirements placed on jurors, the more likely they are to serve. This includes having to communicate with the court only once as it relates to their service. Members agreed that receiving one summons, one request for information, and an attendant date to appear in court is less cumbersome and clearer for the juror.

The task force members understand and sympathize with the concerns of several elected clerks and jury commissioners. As such, the task force’s recommendation explicitly states that conversion should occur with the assistance and support of NCSC experts and that courts should be allowed to establish the timeline for conversion that is commensurate with the jury and trial management practices of the court. These conditions were supported by Ms. Hannaford-Agor, who noted that there is more than one method of conversion and the best approach is court dependent. Therefore, courts must be able to analyze their current processes, including trial scheduling practices, to determine the most appropriate timing for and method of conversion.

➤ *The task force recommends a series of recommendations aimed at optimizing jury operations as well as ensuring that all courts are engaged in practices that facilitate meeting the constitutional obligations to provide a representative jury. These recommendations include:*

- *Collect and use biographical data to assess, per ACJA § 5-203(J)(3)(a)-(b), the representativeness of master jury lists and inclusiveness of master jury lists.*

In April 2021, the Arizona Supreme Court issued Administrative Order 2021-54, ordering all courts in Arizona to collect information about prospective jurors’ gender, ethnicity, and race using a uniform set of questions and responses. The order requires courts to provide prospective jurors the opportunity to answer these questions from the

²⁵ See Ariz. Sup. Ct., Admin. Order No. 2021-54, <https://www.azcourts.gov/Portals/22/admorder/Orders21/2021-54.pdf?ver=2021-04-21-133441-553>.

²⁶ ARIZ. SUP. CT. AD HOC COMM. TO STUDY JURY PRACS. AND PROCS., *supra* note 5.

point of qualification through juror selection. The Supreme Court similarly charged the task force with exploring and making recommendations on “data collection, including demographic data that are important to determine jury composition.”

The task force recommends that information about jurors’ gender, ethnicity, and race be collected from all persons who are sent jury-related mailings. At the very least, courts should collect this information from jurors who are issued a summons and from all jurors who report for service. Collecting this data from all jurors who are issued a summons will provide an idea of the representativeness of the master jury list and jury pool. In addition, collecting this data from all jurors who report for service will allow courts to meet the obligation to provide a representative jury pool as required under *Duren v. Missouri*, 439 U.S. 357 (1979), and to comply with ACJA § 5-203 and Arizona Supreme Court Administrative Order 2021-54.

This information should be collected regularly and compared to each community’s population demographics in accord with U.S. Federal Census data. Courts wishing to analyze this information further should also perform absolute and comparative calculations to identify areas of disparity and to what extent, if any, such disparities are present.

The task force recommends that courts use the full breadth of jury management software technology to gather and analyze the information, particularly using online juror portals for completion of juror qualification questionnaires and other types of jury service questionnaires. Increasingly people are familiar with and expect to have the ability to complete forms and to check on the status of everything from deliveries to test results online. Therefore, courts should leverage this technology to reduce the time and cost to jurors, improve data integrity, and streamline jury staff processes, which in turn reduces costs to the courts themselves.

- *Recommend a checklist of best practices for collection and utilization of data on juror biographical information, specifically gender, ethnicity, and race. (See Appendix B)*

The task force recommends that the AOC adopt the best practices checklist located in Appendix B to aid courts in uniform and consistent practices in collecting juror biographical information. The task force recommends to the greatest extent possible, data should be collected uniformly in every court if it is to be viewed from a statewide lens. Moreover, in order for courts to assess any disparities between the demographics of persons on a master jury list who receive initial jury-related mailings versus those who ultimately end up qualified and available for service, a court needs to collect data at the earliest contact point to the extent possible.

- *Adopt online portal for uploading data on juror biographical questions collected by courts.*

The task force considered the Supreme Court's directive in AO 2021-54 that all courts report the data on gender, ethnicity, and race to the AOC annually. In addition, the task force learned of recent updates to the jury management software that 14 of the 15 counties use to reflect the exact questions and responses delineated in the court's administrative order. The software will allow jurors to answer the questions if a court uses the software's online juror portal capabilities for jury staff to enter the data from paper documents. The task force recommends that the AOC develop a process for courts to upload their data directly to the AOC rather than have to generate paper reports and submit them. This will be a more efficient use of jury staff time and allow the AOC to analyze and use the data.

- *After the first year of statewide data collection of biographical information (gender, ethnicity, race) revisit the responses available for each category to determine whether to expand, change, or allow choice of more than one response.*

The task force recommends the collection of data to assist courts evaluate whether summoned jurors represent a fair cross-section of their community. Often, court use the most recent census data to assess the racial and ethnic makeup of their respective community. Challenges occur when the data fields used by the court are different from the data fields used by the most recent census. For example, the most recent census questionnaire allowed individuals to select from 14 racial categories or write in races not listed on the form. The census questionnaire also allowed respondents to select more than one race. The typical options on court questionnaires regarding race and ethnicity are more restrictive. After the first year of statewide data collection, the task force recommends revisiting the responses to determine whether courts should expand or change the data fields used to collect prospective jurors' biographical information.

Further challenges exist when jurors attempt to complete the court's questionnaire regarding gender, race, and ethnicity but feel unrepresented by the options provided by the court. The restricted options, including the restriction to binary gender choices, may result in jurors feeling they are excluded from our justice system.

- *Statewide use of the National Change of Address (NCOA) database or similar national service to reduce the volume of undeliverable mail and save court resources.*

Approximately 11.2% of the U.S. population moves to a new address each year.²⁷ This percentage significantly impacts jury yield. The U.S. Postal Service will forward jury-related mailings up to one year if a person files a change of address form. But even if a

²⁷ David Ihrke, *United States Mover Rate at a New Record Low*, U.S. CENSUS BUREAU (Jan. 23, 2017), <https://www.census.gov/newsroom/blogs/random-samplings/2017/01/mover-rate.html>.

form has been filed, after a year, jury-related mailings will be returned to a court marked “undeliverable as addressed.”

Undeliverable rates for summonses can increase the number of summonses a court must issue and negatively impact jury yield. Undeliverable rates are noted as being the “single biggest drain on jury yield.”²⁸ Therefore, courts must actively engage in practices that maintain accuracy of their master jury list.

Three practices are cited as impacting accuracy of master jury lists: regular renewal of master jury lists, use of priority list procedures to improve retention of records with most accurate addresses during the merge/purge process, and use of the U.S. Postal Service National Change of Address (NCOA) database. The first practice has long been legislated in Arizona, where courts are required to renew master jury lists twice a year. The task force recommends that Arizona require courts to use the NCOA database or a similar service to reduce the volume of undeliverable mail. This reduces workload for jury management staff and results in savings and postage costs for courts. The task force recommends that because the NCOA service or other such services require a subscription fee, the AOC should determine the effect of a statewide contract or subscription to reduce costs to individual courts.



Recommend that the Administrative Office of Courts revisit the topic of the adequacy of current source lists used to summons jurors and whether the use of additional source lists would be beneficial.

The task force was asked to evaluate the adequacy of the current source lists and consider whether additional source lists would improve the representation of the master jury list. Arizona prospective jurors are currently drawn from two source lists: voter registration rolls and state issued identification through the motor vehicle division.²⁹ The task force reviewed materials and considered information presented at its first meeting by Ms. Hannaford-Agor on source lists and what source lists were used nationally for compiling a master jury list. The Source List and Response Rates Workgroup was tasked with developing initial recommendations on this topic, and in doing so, it also considered information and materials on best practices for merging and purging multiple source lists, how to analyze jury yield, national best practices for increasing jury yield, and self-reported information from the superior court in each county related to summoning and response rates. The workgroup found there was inconsistent availability of detailed data from courts related to summoning, response rates, and juror use from which to consider adequacy of the source lists.

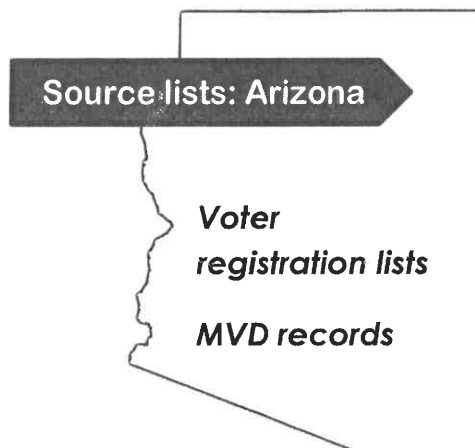
The workgroup explored the current source lists for compiling a master jury list in Arizona and the national data and best practices around identifying the adequacy of source lists and

²⁸ HANNAFORD-AGOR, *supra* note Error! Bookmark not defined., at 5.

²⁹ ARIZ. REV. STAT. ANN. § 21-301(A) (2008).

determining whether additional or alternative sources should be used in a given jurisdiction. The task force ultimately agreed that at this time there is no data from which to analyze the adequacy of current source lists. The task force encourages the Supreme Court and the AOC to revisit this topic after sufficient time has passed to evaluate the data collected by courts as detailed in this report and to evaluate the impact of any adoption of other recommendations made by the task force.

The primary objective of master jury list compilation is to create a list that is broadly inclusive of the jury-eligible population, geographically and demographically representative of the



community, and accurate with respect to the names and addresses of potential jurors. The more inclusive the master jury list, the more likely it will be geographically and demographically representative of the community. Moreover, a more inclusive master jury list distributes the burden of jury service more equitably across the jury-eligible population. NCSC recommends that the master jury list include 85% or more of the jury eligible population.³⁰ In order to assess the inclusivity of each county's master jury list, information on gender, ethnicity, and race would be needed to be included in the data received by the court from the source. At this time that information is not

included; thus, courts themselves cannot assess the adequacy of the source lists. Courts are only beginning to collect this type of data from prospective jurors, and it will be some time before courts have the ability to assess the adequacy of the source lists compared to the demographic census data of their specific county.

To ensure that the master jury list is inclusive of the jury-eligible population, the majority of states require courts to use multiple source lists to compile the master jury list. Eleven states, including Arizona, mandate the use of a combined list of registered voters and licensed drivers.³¹ Connecticut, New York, and the District of Columbia supplement those lists with lists of income tax filers, persons receiving unemployment compensation, and persons receiving public welfare benefits (New York State only). Most states also permit local courts to supplement the required source lists with additional lists. Only eight states rely exclusively on a single source list: the list of registered voters in Mississippi and Montana; the list of licensed drivers in Florida, Michigan, Nevada and Oklahoma; an annual census conducted by each locality in Massachusetts; and recipients of Permanent Fund Income in Alaska.³²

³⁰ NAT'L CTR. FOR STATE CTS., *Jury Managers' Toolbox: Characteristics of an Effective Master Jury List* (2009), <https://www.jurytoolbox.org/more/Characteristics%20of%20Effective%20MJL.pdf>.

³¹ In Arizona "licensed drivers" include commercial driver licenses and those with state-issued identification (state identifications). See A.R.S. § 21-301(A).

³² NAT'L CTR. FOR STATE CTS., *supra* note Error! Bookmark not defined..

The task force heard a presentation on national data and research on the efficacy of using additional or different source lists than those used by Arizona. After careful consideration of the pros and cons of adding a third list, and consideration of sources of those lists, such as unemployment compensation or Arizona Health Care Cost Containment System (AHCCCS) customers, the members determined there was no compelling evidence that any additional source list would provide a sufficient number of unique persons as to have an effect on the representativeness of the master jury lists at this time. The task force also notes the 2001-2002 Ad Hoc Committee to Study Jury Practices and Procedures was also tasked with exploring the question of whether Arizona's source lists were appropriately inclusive. The 2001-2002 committee determined that while there may be a small number of additional individuals who would be added to the existing master list, these same individuals would likely also meet the criteria used by Arizona courts for excusals due to hardships.

As master jury lists become more inclusive, they become increasingly representative. However, few source lists include gender, race, or ethnicity in the information provided for the master jury list. Often the source list itself does not have this information. Courts typically do not collect biographical juror information until the qualification stage of the jury selection process, when the individual responds to a mailing from the court regarding qualification for service or when the juror reports to the courthouse for service. The actual demographic representation of the master jury list is difficult to ascertain because of the inability to identify where under-representation is occurring. Even if Arizona courts reliably collected gender, ethnicity, and race

information from a high percentage of persons beginning at the qualification stage, it would be hard to determine if any under-representation demonstrated by that data was because of the source lists being under-representative. Most courts routinely review only the geographic representation of the master jury list to ensure that all eligible localities or sub-localities are included on it in reasonable proportion to their population.

Census information about each locality can be used to model the demographic representation of the master jury list, but there are limits to such modeling. Arizona courts would need consistent and reliable data in each jurisdiction from which to conduct the analysis. Only one jurisdiction in Arizona collected information from jurors about their gender, ethnicity, and race prior to 2021; however, the Arizona Supreme Court ordered all courts to collect this information beginning July 1, 2021. Therefore, depending on how reliably the courts collect the information and at what stage of the process—at qualification or only upon reporting to the courthouse—there may be

People who serve on juries have a greater respect for the system when they leave. Serving on a jury gives people insight into the justice system and their own communities and corrects misapprehensions about what takes place in a courtroom.

The National Judicial College:
Why Jury Trials are Important to a Democratic Society. [Why-Jury-Trials-are-Important-to-a-Democratic-Society \(judges.org\)](http://www.judges.org/Why-Jury-Trials-are-Important-to-a-Democratic-Society)

future opportunities to revisit the question of the effectiveness of current source lists. Until then, the task force has made a number of other recommendations that are likely to be more effective in ensuring juries represent a fair cross-section of the community from which they are drawn.

➤ ***The task force recommends using text messaging/push notifications for individuals who have opted in for jury service reminders, and if possible, including a link with court location and parking information.***

The task force considered contemporary technology and the growing use of technology by citizens, even those with limited internet access. Increasingly courts are finding that those who interact with the courts desire to use technology to do so. The degree to which technology was deployed to facilitate routine court business during the COVID-19 public health emergency and the long-term investment in closing technology gaps that began well before the pandemic but improved exponentially in 2020, has only increased the public's expectations that there be the ability to provide and receive information electronically. Many courts underestimate the fiscal implications involved in the administrative process of summoning and qualifying jurors. But this cost often is dwarfed by costs that jurors and even employers bear as a result of jury service. Consequently, appropriate and mindful use of existing jury management technologies can positively impact juror utilization and minimize both types of costs.

The task force recommends that courts maximize their use of technology for processes such as:

- Providing or updating juror information, including biographical information;
- Requesting excusal or postponement and submitting supporting documentation where necessary;
- Receiving notice that a requested excusal has been granted or denied;
- Opting in to receive text messaging or push notifications that remind jurors of their jury service date or provide notice that a juror does not need to report to the courthouse;
- Receiving or linking to information about parking, public transportation routes, and courthouse locations;
- Receiving information and updates about juror compensation; and
- Receiving links to or notification and reminders about exit surveys.

➤ ***The task force recommends changing the current automatic postponement policy to allow jurors to pick a date within a specific timeframe for jury service to enable choice of service date and improve participating.***

If a summoned juror is not available on the date scheduled, the person may postpone the date of service two times.³³ A juror may postpone their service because they are traveling, have work conflicts, or simply prefer to serve at a more convenient time. The task force recommends that a court offer jurors the ability to choose a specific time for their jury service. The task force understands that trial frequency will determine the feasibility of this recommendation for certain courts and may require courts to offer different postponement policies. For example, a more populous county with numerous trials may permit a juror to select a specific day or two-week period for jury service, while a less populous county with fewer jury trials may permit a juror to postpone service for a particular period of time (e.g., six months).

Allowing jurors to choose the date of their service during the postponement process aligns with promoting an "ownership culture" in the "Fair Because I Was There Campaign" and has been shown statistically to improve the summons-response rate for jurors who elect to postpone service.³⁴ This type of postponement policy has also been shown to increase the probability the juror will be able to serve while decreasing the number of failures to appear for service.³⁵ The American Bar Association advocates for this type of policy and suggests deferrals of jury service be to a date certain.³⁶

➤ *Statewide use of pre-screen processes for jurors to communicate hardship and bias. In counties that select juries by case, the pre-screen process or questionnaire should be case-specific. The use of a pre-screen process is intended to reduce the number of jurors who experience undue hardship appearing at a court and who are immediately assessed as unable to serve.*

The task force considered various innovations deployed by courts to address the limitations on in-person gatherings of groups of people that resulted from the COVID-19 public health crisis and how such innovations could provide long-term improvements to juror utilization. As noted above, a measure of an effective jury system is how efficiently jurors are used. Therefore, the task force looked to these recent innovations to identify ones that would have a long-term positive impact on juror utilization and identified the use of juror questionnaires as a tool that would not only increase juror utilization but increase juror satisfaction.

The Supreme Court's charge to the task force included review of Arizona's jury processes from the perspective of hardships on jurors. Hardships faced by jurors include missed work, lack of adequate or substitute dependent care, and in many counties, significant travel time, often of several hours, to a courthouse. The task force agreed that the majority of persons summoned for

³³ ARIZ. REV. STAT. ANN. § 21-336 (2004).

³⁴ Karen A. Berris, *Appearance Rates of Potential Jurors Who Confirm, Postpone, or Fail To Respond to the Jury Summons: Are Postponed Jurors Saying "No" or "Not Now"?*, 59 DRAKE L. REV. 649, 659 (2011).

³⁵ *Id.*

³⁶ AM. BAR ASS'N, *Principles of Juries and Jury Trials* (2016), https://www.americanbar.org/content/dam/aba/administrative/american_jury/2016_jury_principles.pdf.

jury service are willing to serve but many are unable to do so because of these hardships. Jury selection practices that allow a court to identify eligible and available jurors who otherwise will ultimately be dismissed for hardship or for a case-specific conflict (such as a close relationship to a party, witness, or other aspect of a case) and strike those jurors before the date they are to report to the courthouse significantly reduces the impact of jury service on the juror. Of note, any questionnaire should explain the resources available to jurors to mitigate certain barriers to service, including compensation through the Arizona Lengthy Trial Fund. A prescreen process also allows courts more time to conduct effective *voir dire* of the remaining panel and thoroughly explore factors that might lead to dismissal of a juror for cause. This in turn bolsters public trust and confidence in the courts.

One such practice is the use of limited, targeted, case-specific questionnaires to identify eligible and available jurors who will be struck for hardship or an agreed-upon for cause basis. The workgroup explored the use of this practice in the Superior Court in Yavapai County for criminal cases during the significant limitations on in-person activities at courts during the COVID-19 pandemic and a similar process used in Maricopa civil trials. (See Appendix C for outline of process and example questionnaires.) The task force recommends that there be a statewide effort to adopt the practice of using juror questionnaires designed to pre-screen for hardship, case-specific bias, or both. Counties should create and use a juror questionnaire that allows the court and the parties to strike—prior to trial—jurors who cannot serve for hardship. In counties that select juries by case, the questionnaires should be case-specific. This recommendation could include a modification of the rules of criminal procedure to codify the practice and ensure its widespread use. Employing a pre-screen process will result in only jurors who have the presumptive ability to serve appearing in court and will allow for tracking of the number of jurors needed for a specific trial. The task force also recommends that the AOC develop training and other efforts to educate and ensure effective and efficient use of this practice by judges, court administrators, and jury management staff. Moreover, the task force points to its other recommendations around jury data collection and maximizing the use of jury management software, by jury staff and jurors, to streamline this practice.

III. Overcoming barriers to jury service.

The question of whether the impact of socioeconomic factors on the demographic composition of a jury pool impacts the fair cross-section of that pool is one that continues to be asked but lacks robust research or data. Yet it has been recognized that factors such as hardship based on childcare concerns, transportation issues, or the inability to take time from work impact prospective jurors' ability to complete their jury service. Changes to juror compensation ranging from increased daily stipends, tiered payments based on length of service, and the one day/one trial concept are all rooted in the consensus that jury service poses a hardship on many compelled to service.

The one day/one trial concept was born from the desire to reduce the financial impact of jury service on prospective jurors; however, even in states like Arizona, where a one day/one trial term of service

statute has been in place for 18 years, financial hardship continues to be a persistent basis for seeking excusal from service or for judges dismissing jurors for cause. Some argue that the fiscal hardship of jury service disproportionately impacts those in lower socio-economic groups and thus leads to their systemic exclusion from jury service.³⁷ This class-based exclusion has been likened to race-based exclusion and thus is viewed by some as similarly affecting the diversity of juries.³⁸

The task force reviewed materials and considered the information presented at its first meeting by Ms. Hannaford-Agor on national efforts around increasing juror pay and other attempts to address financial hardships impacting jury service. The workgroup that conducted the preliminary dive into this topic also considered articles on exclusion from jury service because of socio-economic status, information and materials available through national resources (such as a study of whether employer tax credits to incentivize employers to compensate employees during jury service addresses financial hardship), reports of jury improvements that included juror pay changes by other courts, and statutes and court rules on juror pay in other jurisdictions. Task force members contacted other courts to discuss the success of various modifications to their juror compensation regime to assess whether certain changes affected the representativeness of the jury pool. Further, task force members, which includes judges, jury commissioners, and attorneys shared their experiences with reasons jurors offer for inability to serve, either gleaned through their involvement in processing postponement requests or in dismissing persons for hardship that centered on a financial harm to the prospective juror. Public members of the task force also pointed to websites instructing the public on how to avoid jury service and comments and reactions to service they had heard from others over the years.

Considering all of this information and that Arizona has not advanced changes regarding juror compensation for nearly twenty years, the task force recommends pursuit of three categories of recommendations related to juror compensation: (A) amendments to the statutory minimum compensation and reimbursement amounts including; (B) amendments to when jurors receive or are eligible to receive compensation; and (C) legislation to increase and expand juror compensation or reimbursements.

■ **Category A—Amendments to the statutory minimum compensation and reimbursement amounts.**

➤ *Recommend a change to the statutory daily juror compensation stipend to a rate that is equal to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar.*

³⁷ Anna Offit, *Benevolent Exclusion*, 96 WASH. L. REV. 613 (2021).

³⁸ *Id.*

Arizona’s statutory \$12 daily juror stipend has not changed since 1977. In 1977 the \$12 daily juror stipend was about five and a quarter times the federal minimum wage of \$2.30.³⁹ Had juror pay been adjusted for inflation, jurors would now be receiving approximately \$56 per day.⁴⁰

The task force believes an increase in juror pay would likely improve the inclusiveness and diversity of the jury pool by decreasing the number of persons excused or dismissed for financial hardship. While the task force’s recommendation cannot and is not intended to make every juror “whole,” members believe more equitable juror compensation shows recognition of the value of a juror’s service and likewise increases juror satisfaction. Based on its review of relevant information and data related to juror compensation, the task force recommends a statutory increase of the daily juror stipend from \$12 per day to a rate equal to four times the minimum wage prescribed by A.R.S. § 23-363,⁴¹ subsections a and b, rounded up to the nearest dollar which is roughly \$49 per day.

➤ ***Recommend that the Lengthy Trial Fund statute, A.R.S. § 21-222, be amended to increase the minimum amount of earning replacement or supplemental earning a petit juror receives to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar.***

The Lengthy Trial Fund provides that “the amount of replacement or supplementation earnings shall be at least forty dollars but not more than three hundred dollars per day per juror.” Currently the minimum amount a juror serving on a lengthy trial will receive is just over three and a quarter times higher than the statutory daily stipend of A.R.S. § 21-221. The task force’s recommendation to increase the minimum daily juror compensation makes the daily stipend higher than the minimum amount a juror on a lengthy trial would receive. An amendment to the Lengthy Trial Fund to raise the minimum amount to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar is necessary to avoid the daily stipend under A.R.S. § 21-222 from being higher than the daily rate and creating a disparity in the compensation rates.

Therefore, if a statutory increase to the minimum juror compensation is made, a parallel change to A.R.S. § 21-222 is necessary to the Lengthy Trial Fund statute to raise the minimum amount of earning replacement or supplemental earning for a petit juror to four times the minimum wage prescribed by A.R.S. § 21-363.

➤ ***Amending the formula for Lengthy Trial Fund reimbursement to require 30% of the minimum rate paid to each eligible juror (defined as four times the minimum wage prescribed***

³⁹ U.S. DEP’T OF LAB., *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2009*, <https://www.dol.gov/agencies/whd/minimum-wage/history/chart>.

⁴⁰ See BUREAU OF LAB. STATS., *CPI Inflation Calculator*, <https://data.bls.gov/cgi-bin/cpicalc.pl>.

⁴¹ At the printing of this report, the statutory minimum wage was \$12.15 per hour. That rate will increase to \$12.80 per hour on January 1, 2022. See INDUS. COMM’N OF ARIZ., *Labor Department–Minimum Wage*, <https://www.azica.gov/labor-minimum-wage-main-page> (last visited Sept. 20, 2021).

by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar) be paid by the local courts with the remainder reimbursed from the Lengthy Trial Fund.

If the legislature enacts an increase of the minimum daily juror compensation, a change to the reimbursement formula under the Arizona Lengthy Trial Fund is also necessary. Without this change, courts would be responsible for paying all of the costs for jurors who serve on lengthy trials and who are only eligible for the minimum reimbursement rate. To minimize the cost absorbed by the trial courts, the task force proposes a comprehensive package to increase the minimum daily compensation rate for jurors, increase the minimum daily rate under the Lengthy Trial Fund statute, and modify the reimbursement formula. With a modification of the formula for Lengthy Trial Fund reimbursements for eligible jurors from \$12 per day to 30% of the minimum rate paid by each eligible juror, local courts and thus local governments will be responsible for approximate \$14.40 per day for each juror eligible for compensation under the Arizona Lengthy Trial Fund (\$14.40 is 30% of the proposed minimum rate, using the current statutory minimum wage). The remaining amount will be reimbursed to the local court from the Lengthy Trial Fund.

Currently when a juror is eligible to seek funds from the Lengthy Trial Fund, the juror completes a claim form and submits it to the court within the time frame and with the supporting documentation necessary under both statute and the Code of Judicial Administration. The local court pays the juror and then the local court seeks reimbursement from the AOC using a reimbursement claim form. Under statute, courts are reimbursed the difference between the daily juror stipend and the amount the juror receives, not less than forty dollars and not more than three hundred dollars per day. Currently the statutory daily stipend is \$12 and the minimum amount a juror serving on a lengthy trial is eligible to receive is \$40. Under the Lengthy Trial Fund statute, the court is responsible for \$12 of that \$40. In other words, the local court is reimbursed from the Lengthy Trial Fund \$28 of the \$40.

Therefore, the statutory formula for reimbursement to courts from the Lengthy Trial Fund must be amended. The task force considered that the current \$12 juror stipend is roughly 30% of the minimum daily Lengthy Trial Fund rate of \$40. Therefore, courts are reimbursed by the Lengthy Trial Fund roughly 70% of the minimum rate. The task force recommends using this percentage to amend the Lengthy Trial Fund statute to ensure the Lengthy Trial Fund continues to serve its statutory purpose and local courts do not bear an undue burden.

■ **Category B—Amendments to when jurors receive or are eligible to receive compensation.**



Recommend amending A.R.S. § 21-221(B) to delete the last sentence that excludes juror pay for the first day of service if a juror is dismissed without being sworn and seated for jury service.

For many individuals, even a portion of a day, let alone a full day, at the courthouse for jury service imposes a financial burden. Under current Arizona law, a juror who appears for jury service but is excused from further attendance on the first day receives mileage only and does not receive the daily statutory stipend of \$12.⁴² Jurors who appear at the court in response to a summons do not know how long their jury service will last. They may have been summoned for a matter anticipated to last a specific number of days or weeks, but they often do not know those details. For example, a juror who knows that the summons is for a three-day trial may not be randomly selected for the panel after arrival or may wait in a jury assembly room and never be called to a courtroom for participation in the jury selection process. Even when a juror is randomly selected for a panel and does participate in the *voir dire* process, the juror may be dismissed after a few hours. Hourly and shift workers whose jury service lasts only part of their shift may not have the option to work the remainder of the shift because they or their employer had to cover the shift the minute the juror indicated they would be absent for an unknown amount of time. For many of Arizona's workers, a missed shift is lost income, often creating an undue financial hardship. In addition, in many Arizona counties, jurors travel long distances to the courthouse, also impeding their ability to return to work if dismissed during the first day. Therefore, the task force recommends amending Subsection B of A.R.S. § 21-221 to permit compensation for any juror who is required to and does appear in person at the courthouse for jury service, whether the juror is ultimately excused or sworn in as a trial juror.

The task force appreciates that this recommendation will increase the costs for local court and local governments. As mentioned above, the recommendations of this task force are interrelated. Appreciating that certain recommendations will increase court costs, the task force includes other recommendations to offset those costs, increase juror utilization, decrease court costs for summoning jurors, and reduce the number of individuals who report in-person for jury selection, while remaining focused on the goal of ensuring that jurors represent a fair cross-section of the community.



Recommend that Lengthy Trial Fund minimum days of service eligibility be reduced from 6 days to 4 days.

The Lengthy Trial Fund provides that “monies in the fund shall be used to pay full or partial earnings replacement or supplementation to jurors who serve as petit jurors for more than five days and who receive less than full compensation” from their employer. The task force recommends that the Lengthy Trial Fund statute be amended to be applicable to all petit jurors who serve more than three days, effectively expanding the number of jurors that are eligible to access these funds. It is estimated that this change would lead to an estimated \$133,232 increase in expenditures from the Lengthy Trial Fund.⁴³ In fiscal years 2017 through 2020, the Lengthy

⁴² ARIZ. REV. STAT. ANN. § 21-221(B) (1985).

⁴³ The estimated \$133,232 increase in expenditures from the Lengthy Trial Fund is based on the length of trials prior to the elimination of peremptory challenges. The task force will continue to monitor the average length of jury trials after the

Trial Fund carried a surplus that averaged \$158,717 per year. The task force recognizes that over the years the legislature has swept the surplus from the fund, leading to delays in reimbursements to courts, but in the last year, due to the stoppage and reduction of trials during the pandemic, this backlog has been cleared. The task force also recognizes that at the time of this report jury trials have resumed and there will be an increase in rate of trials, thus a likely increase in the number of lengthy trials in the next year or so to clear the backlog of trials caused by the Covid-19 public health crisis. However, any increased expenditures from the Fund for this backlog will be temporary. Considering the average surplus revenues in the Fund each year, it appears that the Fund can bear the costs of this recommendation.

n Category C—Other recommendations related to juror compensation or reimbursements to reduce barriers to jury service.

➤ ***Legislation to have qualified employers pay employees their wages up through the third day of service (Days 1-3). Legislation should include a tax credit for employers.***

The task force's charge included not only identifying ways to reduce barriers to jury service but also identifying ways to increase public awareness and community valuation of jury service. Financial hardship from jury service impacts a large number of citizens because jury service means loss of income. In fact, Arizona courts have adopted a policy of liberally granting excuses from jury service for financial hardship.⁴⁴ Although Arizona prohibits employers from requiring employees to use annual, vacation, or sick leave for time spent responding to a summons for jury duty, participation in jury selection, or serving on a jury,⁴⁵ the reality is that a significant number of employees face the unfortunate choice of losing income or having to use accrued leave to honor their civic duty of jury service to avoid inevitable financial hardship.

Arizona's statutory prohibition against requiring employers to provide paid leave or compensate an employee when the employee is absent from work because of jury service causes direct hardship to many Arizona employees and forces otherwise willing and eligible citizens to seek excusal or dismissal from jury service to avoid the very real financial harm such service causes.⁴⁶ The task force recognizes that while Arizona has implemented programs and policies such as one day/one trial and Lengthy Trial Fund reimbursements for lost wages when a juror serves on a trial exceeding 5 days, a persistent gap remains between those who can afford to meet their civic duty and those who must choose to seek excusal from it because of the financial burden.

elimination of peremptory challenges to assess whether the financial projections relied upon for this recommendation remain reliable.

⁴⁴ See ARIZ. JUD. BRANCH, *Jury Service—What to Expect*, <https://www.azcourts.gov/juryduty/Jury-Service-What-to-Expect> (“Excuses are granted on the basis that . . . jury service would cause you to incur costs that would have a substantial adverse impact on the payment of your necessary daily living expenses or on those for whom you provide regular care.”)

⁴⁵ ARIZ. REV. STAT. ANN. § 21-236(A) (2004).

⁴⁶ *Id.* at (A), (B).

If an individual is selected to serve on a jury, the individual will not be summoned to serve again for another 24 months.⁴⁷ Despite the relative infrequency of individuals being asked to appear in person for jury service, the task force appreciates the potential financial burden to qualified employers who would be required to compensate their employees for jury service. As a result, the task force attempted to make recommendations to minimize the financial burden for employers. First, the recommendation that employers compensate their employees for jury service only applies to the first three days of jury service. As noted above, the task force recommends statutory revision to allow jurors to begin receiving reimbursement from the Lengthy Trial Fund on Day 4 for service as a trial juror. Thus, the responsibility for eligible employers is limited to a juror's first three days of service. Second, the task force recommends that eligible employers receive a tax credit for compensation paid to employees for jury service. Third, the task force recommends that small employers can opt out of compensating their employees for jury service.

Currently, eight states require employers to pay their employees for jury service: Alabama, Colorado, Connecticut, Louisiana, Massachusetts, Nebraska, New York, and Tennessee.⁴⁸ The task force recommends that qualified employers in Arizona compensate their employees for Days 1 through 3 of jury service. The task force recommends this requirement applies to full time and part-time employees, whether salaried or hourly, and includes any days the employee was previously or regularly scheduled to work. The task force recognizes such a requirement comes at a cost to employers and therefore recommends that employers receive a tax credit relative to this requirement. Moreover, the task force also acknowledges that the smaller a business or agency the larger the burden of absent employees and financial impact of paying employee wages for up to three days of the employee's jury service. Therefore, the task force recommends that it be up to the discretion of employers with 20 employees or less as to whether to pay employees under this legislative change. Smaller employers opting to pay their employees should be guaranteed the same tax credit.

This requirement that employers pay an employee up to three days of wages for days the employee is responding to a jury summons or serving as a juror would not just allow more citizens who are willing and eligible to serve meet their civic duty without financial hardship, but it would greatly impact the public's view of the importance of jury service. When employers recognize the importance of our democratic systems and support engagement in those systems, it reinforces in employees, and by extension the public, the importance of these systems and participation in them. Public and private employers, like individual citizens, rely on our judicial

⁴⁷ ARIZ. REV. STAT. ANN. § 21-335(A) (2004).

⁴⁸ Ala. Code § 12-16-8(c) (2020); Conn. Gen. Stat. § 51-247 (2021); La. Stat. Ann. § 965(B)(1) (2021); Mass. Gen. Laws ch. 234A, § 48 (2021); Neb. Rev. Stat. § 25-1674 (2021); Tenn. Code Ann. § 22-4-106(b). Colorado sets a cap on rate employers are required to pay at \$50 per day unless employer agrees otherwise. *See* Colo. Rev. Stat. § 13-71-126 (2020). New York requires an employer of ten or more employees must pay to an employee serving on jury duty the first \$40.00 of that employee's daily wage for the first three days of jury. *See* N.Y. Jud. Laws. Art. 16, § 521 (Westlaw 2021).

systems to render fair verdicts. Therefore, employer support of employees' participation in jury service fosters the selection of jurors who can render impartial justice.

➤ ***Amend A.R.S. § 21-221 (the daily juror stipend statute) to permit courts to provide additional payments to qualified jurors who require dependent care to serve on a jury.***

Up until 1975, women could be excluded from jury service by statute.⁴⁹ After the United States Supreme Court's decision in *Taylor v. Louisiana*, the exclusion of many women from jury service has been achieved through hardship mechanisms permitting the exclusion of caregivers from service.⁵⁰ Arizona's existing juror compensation scheme does not offer compensation to caregivers; rather, the norm is that caregivers who cannot secure care for their dependents are excused from jury service because of hardship.⁵¹

The task force explored three mechanisms for improving access to jury service among caregivers: 1) direct care facilities run by courts, 2) contractual relationships with offsite facilities, and 3) care-giving stipends. The task of creating, staffing, and administering on-site care facilities would be the most costly and difficult to implement. Contracting with off-site facilities proved to be unworkable because there are an insufficient number of facilities near courts in every county that could accommodate the needs of the jurors. This led the task force to recommend that the daily juror stipend be amended to include an additional caregiving stipend equal to four times the minimum wage prescribed by A.R.S. § 23-363, subsections a and b, rounded up to the nearest dollar, for each day of service that those jurors are selected to serve.

➤ ***Further, amend the Lengthy Trial Fund statute to cover this dependent care stipend for all days of service when the juror qualifies for and seeks reimbursement under the Lengthy Trial Fund.***

Task force members acknowledged that a substantial number of jurors are exempted from service because of the hardship associated with their caregiving roles. The task force recommends that jurors who qualify for the caregiving stipend be paid solely from the Lengthy Trial Fund upon serving the requisite number of days. This will minimize the expense imposed upon local courts.

➤ ***Increase the \$15.00 Lengthy Trial Fund-associated filing fee to \$21.00 to minimize the financial impact of the increased compensation recommendations.***

⁴⁹ See *Taylor v. Louisiana*, 419 U.S. 522 (1975).

⁵⁰ See, e.g., Gretchen Ritter, *Jury Service and Women's Citizenship Before and After the Nineteenth Amendment*, 20 L. & HIST. REV. 479, 485 (2002) (discussing historical view of women as caregivers); See generally Kim Parker, *Women More Than Men Adjust Their Careers for Family Life*, PEW RSCH. CTR. (Oct. 1, 2015), <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life/> [<https://perma.cc/K4TU-HZXU>].

⁵¹ See ARIZ. REV. STAT. ANN. § 21-202(B)(4)(c)(i) (2021).

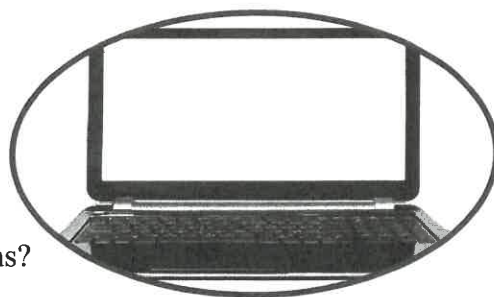
The Arizona Lengthy Trial Fund consists of monies received from additional fees paid on all filings, appearances, responses, and answers pursuant to A.R.S. § 12-115.⁵² Arizona statute allows the Supreme Court to establish this filing fee and the court does so in its judicial code. The fee is applicable to the filings listed in the table at the end of the code. The fee predominately applies to superior court filings and the list of filings can exclude filings in cases that do not afford the opportunity for a trial by jury.

The current fee of \$15 was set in 2003 and has not been increased since that time. Based on the Consumer Price Index (CPI) that \$15 fee is now worth \$21.30. If the fee was raised to \$21, it is estimated that an additional \$243,825 would be generated for the Lengthy Trial Fund. In light of the task force's recommendations in this section that, if adopted, would cause a noticeable increase in expenditures from the Lengthy Trial Fund, the task force recommends that this fee increase be implemented by the Court.

➤ ***Encouraging the use of technology in jury selection to allow prospective jurors to participate in jury selection from their homes or places of work.***

Beginning in May 2020, the Superior Court in Maricopa County analyzed whether individuals were able to participate in jury selection or service from home. Every prospective juror who registered for jury service using the pre-appearance registration portal completed a series of questions to assess whether they could participate in jury selection or service from home. The court asked five qualifying questions:

1. Do you have a device with a camera?
2. Do you have reliable internet?
3. Do you have a private space?
4. Do you have a location that is free from interruptions?
5. Do you have the physical ability to serve as a juror from home?



After reviewing the initial 40,000 responses, the court concluded that approximately 62% of the responding jurors answered “yes” to all five of the qualifying questions. Courts in other states, including Washington, California, Texas, and New Jersey, have explored allowing jurors to participate in jury selection, service, or both from home. Importantly, courts permitting remote jury selection or service will need to ensure that all jurors can participate in jury selection whether or not the juror has access to a device. Therefore, courts allowing remote participation will need to establish community hubs in libraries or community centers for jurors to have access to a device, or courts will need to follow the lead of courts like Washington and New Jersey and provide prospective jurors with a device for purposes of participating in jury selection or jury service.

⁵² ARIZ. REV. STAT. ANN. § 21-222(A) (2021).

IV. Minimizing the potential for discrimination in the jury selection process.

The task force discussed peremptory challenges at numerous meetings. The group reviewed the pending rule petitions and comments submitted in response to the rule petitions. The task force also reviewed data released by the Superior Court in Maricopa County regarding the use of peremptory challenges in 2019 at the downtown courthouse in Phoenix by prosecutors and defendants in criminal cases and plaintiffs and defendants in civil cases. The task force also received input from public members, including a joint letter from 30 prosecutors.⁵³ After thorough consideration of these issues, the task force voted 12-4 to recommend to the Arizona Supreme Court that it consider abolishing peremptory challenges. The Arizona Supreme Court resolved to eliminate peremptory challenges before this task force could deliver that recommendation to it.

Courts and advocates who support retention of peremptory strikes extol the system as fundamental to achieving a fair trial by jury. See *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 620 (1991) (“[The] sole purpose [of peremptory challenges] is to permit litigants to assist the government in the selection of an impartial trier of fact.”); *Holland v. Illinois*, 493 U.S. 474, 484 (1990) (“We have acknowledged that this device [the peremptory challenge] occupies ‘an important position in our trial procedures,’ and has indeed been considered a ‘necessary part of trial by jury.’”) (citations omitted). Proponents of peremptory challenges often cite a litigant’s ability to have a role in the jury selection process as promoting a litigant’s sense of control over jury composition and respect for the jury’s verdict. The task force members recognized that although the right may have importance, the right is not a constitutional one. See *J.E.B. v. Alabama ex rel., T.B.*, 511 U.S. 127, 138 n.7 (1994) (“Although peremptory challenges are valuable tools in jury trials, they ‘are not constitutionally protected fundamental rights.’”) (citations omitted); *Batson v. Kentucky*, 476 U.S. 79, 91 (1986) (“While the Constitution does not confer a right to peremptory challenges, those challenges traditionally have been viewed as one means of assuring the selection of a qualified and unbiased jury.”) (citations omitted).

Some task force members who supported the elimination of peremptory challenges asserted that peremptory challenges have contributed to historical and ongoing under-representation of minority groups on juries, broadly increase administrative and litigation costs, result in unconstitutional and discriminatory practices, and amplify resource disparity in litigation. Members argued that the current public perception is that jury service is reserved for only certain segments of society. This is, in part, because historically racial and ethnic minorities have been under-represented within our juries.

During the task force’s work, the Superior Court in Maricopa County released data for the year 2019 for the downtown courthouse in Phoenix regarding the composition of individuals who appeared there for jury service, were removed based on hardship or cause, or were stricken as a result of a party exercising a peremptory challenge. The data also included demographic information on individuals who were empaneled as trial jurors. The data showed that in 2019, prosecutors in Maricopa County jury trials

⁵³ The letter, labeled “Peremptory Challenge Letter to Task Force,” is available on the task force website under June Meeting Materials at [Jury TF Meeting Information \(azcourts.gov\)](https://www.jury.tfmeetinginformation.org)

struck individuals who identified as Black at a rate 40% greater than their presence in the venire (as 5.9% of prosecution strikes were exercised against individuals who identified as Black, compared with the 4.15% Black venire), and struck individuals who identified as Native American at a rate 50% greater than their presence in the venire (as 2.1% of prosecution strikes were exercised against individuals who identified as Native American, compared with a 1.4% Native American venire). Some task force members argued the Maricopa data revealed racially correlated decision making, particularly by prosecutors in 2019 Maricopa County jury trials.

The initial report from the superior court was submitted by one task force member to Dr. Edward J. Bedrick, assistant director of the Statistics Laboratory, Department of Epidemiology and Biostatistics, Mel and Enid Zuckerman College of Public Health, University of Arizona.⁵⁴ After reviewing the initial report, Dr. Bedrick asserted that the ethnic and racial composition of peremptory challenges made in criminal cases by the defense—but not the prosecution—was inconsistent with the two jury venire populations.

During task force discussions, some members urged courts to collect more data regarding the use of peremptory challenges, and at least one member questioned the accuracy of the data released by Maricopa County's superior court.

The task force also considered alternatives, such as a reduction in the number of peremptory challenges coupled with more robust questioning of prospective jurors to assist parties in learning more about a juror's potential for being biased or unfair. Opponents of peremptory challenges often allege that in deciding whether to exercise peremptory strikes, attorneys rely heavily on stereotypes and



generalizations because of the limited information gathered during the jury selection process and a lack of any reliable way to determine prospective jurors' subtle biases. *See, e.g.,* TED A. DONNER & RICHARD K. GABRIEL, *JURY SELECTION: STRATEGY AND SCIENCE* 1–7 to 1–8 (3d ed. 2007); JEFFREY T. FREDERICK, *MASTERING VOIR DIRE AND JURY SELECTION* 24 (1995). Scholars frequently argue this reliance on stereotypes and generalizations is often unconscious. *See* Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 246 (2005).

Our system of trial by jury rests on a foundation of the collective wisdom, common sense, and fact-finding abilities of members of our community. Jurors bring diverse viewpoints and

⁵⁴ The report issued by the superior court in Maricopa County was amended on July 2021 after further auditing and analysis of the initial data. The data from the initial report review by Dr. Bedrick was adjusted because of erroneous report parameters and minor data integrity issues. Both reports are available on the task force website under May and July Meeting Materials at [Jury TF Meeting Information \(azcourts.gov\)](https://www.jurytfmeetinginformation.com), and Dr. Bedrick's analysis is also available on the task force website under the July meeting materials.

experiences to the trial, and they have been determined by the court through questioning to be fair, impartial, and qualified to serve. Inclusion of these diverse characteristics and life experiences should be considered important goals of our jury system at a systemic level in addition to the impartiality requirement. With that diversity, not only will there be a heightened perception of fairness and accurate community representation, but also the potential to increase and motivate civic engagement within our community. *See* Andrew E. Taslitz, *The People's Peremptory Challenge and Batson: Aiding the People's Voice and Vision Through the "Representative" Jury*, 97 IOWA L. REV. 1675, 1709–10 (2012) (discussing "one of the largest studies on juries and democracy").

One of the main concerns in the discussion surrounding reduction of peremptory challenges is the fear that jurors who are biased or unfair will be selected as trial jurors. Peremptory challenges give litigants a voice in determining who sits in judgment of their case, and they provide litigants the ability to remove jurors the litigant believes will be unfair or biased, despite the judge's conclusion that the jurors are fair and impartial. After much debate, study, and analysis, the task force members voted 12-4 to recommend that the Arizona Supreme Court consider elimination of peremptory challenges and set forth policy, procedures, and, if necessary, rules that require a more robust rule to secure better for-cause strikes. Prior to issuance of this report, the Arizona Supreme Court adopted a rule revision to eliminate peremptory challenges during jury selection.

The Arizona Supreme Court referred back to this task force a request that the group consider additional rules that may merit revision to ensure that in the absence of peremptory challenges, courts empanel fair and impartial jurors. This supplemental request will be addressed in a second report submitted in November 2021. However, during the initial evaluation by the task force, members recommend the use of targeted juror questionnaires, including online tools currently being used in Yavapai County and in some trials in Maricopa County to gather candid information from jurors regarding their potential bias. Although the workgroup will study the process further and provide additional recommendations for the use of questionnaires, Appendix C includes an outline of the questionnaire process used in Yavapai and Maricopa counties.

Task force members also recommend that judges ensure sufficient meaningful time is provided for the court and the parties to question prospective jurors. This time should be used to determine whether a juror is qualified to serve or whether the individual should be removed for cause or hardship. The members also recommend training for judicial officers and jury management officials on tools for more effective practices for improving the use of for-cause strikes and eliciting candid information from prospective jurors.

The task force also recommends training for judicial officers and attorneys regarding implicit bias and its impact on jury selection.



Another task force charge involved analysis of the current administrative order reducing the number of peremptory challenges. Prior to the Arizona Supreme Court's decision to eliminate peremptory challenges, the task force voted to recommend the continuation of the administrative order restricting the number of peremptory challenges for one year and recommended that the presiding superior court judges be given discretion to reinstate the number of peremptory challenges authorized by existing court rules. This recommendation was adopted independent and apart from the question of whether the use of peremptory challenges should be abolished. The rule revision eliminating peremptory challenges becomes effective January 1, 2022; therefore, the current reduction by administrative order relates only to jury trials started in the next 90 days.

Appendix A: Administrative Order

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
ESTABLISHMENT OF THE TASK)	Administrative Order
FORCE ON JURY DATA COLLECTION,)	No. 2021 - <u>35</u>
PRACTICES, AND PROCEDURES)	
)	
)	

For more than two decades, the Arizona Supreme Court has led the nation in promoting jury improvement reforms that have led to more effective jury service. This commitment to promoting public trust and confidence in our jury system continues today with a renewed focus on juries and the need to ensure that they fairly represent a cross-section of the local community in which they assemble.

The judiciary recognizes the importance of jury service and that the juror summoning process and jury selection practices result in juries that are representative of the demographics of the community.

The COVID-19 public health emergency has created jury safety issues and a substantial backlog of jury trials pending in the Arizona trial courts. To reduce the number of citizens summoned to jury service, the Chief Justice issued an Administrative Order (currently AO 2020- 197), which in part reduced the number of peremptory challenges for potential jurors.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution, IT

IS ORDERED that:

1. ESTABLISHMENT: The Task Force on Jury Data Collection, Practices, and Procedures is established.
2. PURPOSE: The Task Force shall explore and make recommendations regarding:
 - a. Data collection, including demographic data that are important to determine jury composition.
 - b. Adequacy of current source lists used to summons jurors and whether use of additional source lists would be beneficial.
 - c. Ways to increase response rates to summons for jury service and reduce barriers to jury service.
 - d. Whether increasing juror pay would allow more potential jurors to serve.
 - e. Whether the reduction in the number of peremptory challenges should be continued

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for a period of up to three years to reduce the number of prospective jurors required for the impending jury trial backlog during post-pandemic recovery.

- f Whether peremptory challenges of jurors systemically reduce the representation of minorities and whether changes to the peremptory challenge rules should be made.
 - g Content for public education information aimed at increasing awareness of jury service process and value of jury service.
3. REPORT AND RECOMMENDATIONS: The Task Force shall submit a report of recommendations to the Arizona Judicial Council by October 1, 2021.
 4. MEMBERSHIP: The individuals listed in Appendix A are appointed as members of the Task Force for a term beginning upon the signing of this Order and ending June 30, 2022. The Chief Justice may appoint additional members as may be necessary.
 5. MEETINGS: Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.
 6. STAFF: The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports and petitions.

Dated this 10th day of March, 2021.

ROBERT BRUTINEL
Chief Justice

Appendix B: Collection of Gender, Ethnicity, and Race Information: Best Practices Checklist

- ☐ Regardless of whether a court uses a 1 or 2-step jury system, the initial notice should request the following information, as required by Supreme Court AO 2021-54 and Arizona Code of Judicial Administration § 5-203:
 - Gender
 - Male
 - Female
 - Ethnicity – self identified (use list from U.S. Federal Census or as ordered by Administrative Order or ACJA sections)
 - Race – self identified (use list from U.S. Federal Census or as ordered by Administrative Order or ACJA sections)
- ☐ If feasible, allow individuals to provide information online
- ☐ Collect information from all individuals – including those who claim they are exempt from jury service, those who are excused or disqualified, and those who request a postponement of service. Provide a due date for the response and send a follow-up notice
- ☐ Provide jurors an opportunity to report this information on the day of service as well
- ☐ Store information in a format that can easily access specific data (e.g., data regarding percentage of females in jury panel)
- ☐ Create reporting structures and regularly gather data to compare and evaluate the composition of the specific court's jury pool and reporting jurors. Many courts use jury management software; consult with IT professional, and the jury management software company if appropriate, to discuss ways to extract such data or develop automated reports.

Appendix C: Statewide Use of On-Line Juror Questionnaires

During the public health crisis, courts found innovative methods to learn information about prospective jurors. One tool involved the development and use of online case-specific jury questionnaires. The task force recommends the use of online questionnaires and intends to further explore the use of questionnaires as part of the November 2021 report.

The task force recommends the creation of statewide portal for courts to obtain questionnaires for use in jury trials. Maricopa County currently uses Microsoft Forms as a base for its online jury questionnaire, while Yavapai County uses Google Forms. To access an example of a questionnaire used by the Superior Court in Maricopa County, simply point a smartphone camera at the QR code (Quick Response) at right.



Figure 1—QR Code

After prospective jurors complete the questionnaire, the responses are effortlessly converted to an Excel spreadsheet, making the prospective jurors' responses easy to evaluate and digest. This process allows litigants, lawyers, and the court to gather candid information from jurors prior to starting oral *voir dire*. Moreover, this process allows more streamlined questioning and permits the prospective jurors to provide information in a more private setting.

For courts summoning by case, access to the online questionnaire can be provided through text notification or by placing a URL (the address of a website) or a QR code on the juror summons. After gathering the responses, the court and the lawyers can review the prospective jurors' answers and release certain jurors for hardship or cause, thus reducing the number of jurors required to appear in person at the courthouse for jury selection. Of note, courts may need to mail a small number of questionnaires to jurors who do not have smartphones or access to computers. Although it may need to provide paper questionnaires to some jurors, a court that relies on technology will reduce the costs of mailing questionnaires and increase convenience for the prospective jurors.

For courts summoning by day rather than by trial, the process is similar. To use a case-specific jury questionnaire in a court that summons by day, the court or staff will provide the prospective jurors with a QR code or a short URL when the jurors arrive. In the Superior Court in Maricopa County, iPads are available for any juror who lacks a smartphone or a laptop. The jurors complete the questionnaire while waiting in the jury assembly room. As the jurors are providing information, the parties and the judge are in the courtroom reviewing the information digitally received from the jurors and discussing potential challenges for hardship or cause. The parties and the court are also taking notes on areas for oral questioning of specific jurors and identifying which jurors may wish to speak privately about certain matters. An example of the responses converted to an Excel spreadsheet follows.

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C	D	E	F	G	H
al disability that pre	If "Yes", please explain	e Phoenix Area exp	Please describe what you read or believ	Given those opinio	What caused you to answer "No" or "I do
No		Yes	House got flooded	Yes	
No		No			
No		No			
No		No			
Yes	Manic depression since 2001 Fibromyalgia limits sitting long periods ,Bladder incontinence . Religious convictions limit certain cases I could participate in.	Yes	I remember when this happened as I have several friends that live in that community. Other than that I have not a definite opinion.	I do not know	Only if presented with all facts or proof pertaining to such case i would hope to be fair and impartial . My religious upbringing have guided me to not meddle in others affairs .I have not been versed in planning and zoning and I do think Mother Nature brought about this unfortunate incident .
No		No			
No		No			
No		No			
No		No			
No		No			
No		Yes	I have not read about this particular case. However, I have formed the initial opinion that the Defendant is attempting to assign liability to the property owner	No	For reasons stated above, I believe the defendant is responsible.
No		No			
No		Yes	I feel the canal channels fill only if drainage systems overflow. So it could be a reason. Clogging channel is secondary to that. That is my impression from what I know.	I do not know	Because I feel ultimately that the interest of the citizens should be protected in some way in the end. I do hope to be fair. I do not honestly humbly intend to accuse anyone.

Figure 2--Jury Questionnaire Results, Superior Court in Maricopa County

Appendix D: Proposed Amendments to Arizona Revised Statutes § 21-221

21-221. Fees and mileage

A. Each juror shall be paid by the county:

1. For each day's attendance upon the superior court or justice court, ~~twelve dollars~~ AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR.
2. For each mile necessarily traveled from his residence to the court and back to his residence, an amount equal to the amount paid to state officers and employees pursuant to section 38-623, subsection A. Reimbursement shall be at the computed mileage rate regardless of whether the travel is accomplished by private, rented or chartered motor vehicle. When a juror necessarily returns to his residence and travels back to court during the period of service because of a recess ordered by the court, he shall be paid on the same basis for such travel.
3. FOR CARE OF ONE OR MORE CHILDREN OR DEPENDENTS SUBJECT TO THE JUROR'S CARE, IF NECESSARY FOR THE JUROR'S PARTICIPATION IN THE JURY, AN ADDITIONAL STIPEND FOR EACH DAY OF ATTENDANCE IN AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR.

B. Attendance on the court shall include the first day a juror is required to attend and shall continue each day of actual attendance on the court thereafter, until the juror is either temporarily or permanently excused from jury service. ~~Any juror who is excused from further attendance upon the first day of this appearance in obedience to a summons shall receive a mileage allowance only.~~

Appendix E: Proposed Amendments to Arizona Revised Statutes § 21-222

21-222. Arizona lengthy trial and digital evidence fund

(Rpld 7/1/27)

A. The Arizona lengthy trial and digital evidence fund is established consisting of monies received from the additional fees paid on all filings, appearances, responses and answers pursuant to section 12-115. The monies in the fund shall not be used for any purpose other than as prescribed in this section.

B. The supreme court shall administer the fund and shall adopt rules for the administration of the fund. Not more than three percent of the monies in the fund shall be used for the reasonable and necessary costs of administering the fund. On or before the fifteenth day of each month, on receipt of a request for reimbursement the supreme court shall transmit monies from the fund to a jury commissioner for monies paid to a juror under this section, together with a fee of not less than the amount prescribed in section 12-284, subsection A, class E for each application for payment of replacement or supplemental earnings by a juror.

C. Subject to the availability of monies, monies in the fund shall be used to

1. Pay full or partial earnings replacement, ~~or supplementation,~~ AND DEPENDENT CARE STIPENDS PURSUANT TO § 21-221(A)(3) to jurors who serve as petit jurors for more than five days and who receive less than full compensation. The amount of replacement or supplemental earnings shall be at least ~~\$40~~ AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR but not more than \$300 per day per juror beginning on the first day of jury service.
2. If monies are available in the fund after paying jurors pursuant to paragraph 1 of this subsection, pay for the management and storage of digital evidence and to facilitate the display of the evidence to the jury and court at a trial and related proceedings.

D. A juror whose jury service lasts more than ~~five~~ FOUR days may submit a request for payment from the fund. The amount a juror receives from the fund is limited to the difference between the jury fee prescribed in section 21-221(A)(1) and the actual amount of earnings a juror earns, not less than ~~\$40~~ AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR, up to the maximum level payable under subsection C, paragraph 1 of this section, minus any amount the juror actually received from the juror's employer during the same time period. A juror who requests payment from the fund:

1. Shall disclose on the form the juror's regular earnings, the amount the juror's employer will pay during the term of jury service starting on the first day and thereafter, the amount of replacement or supplemental earnings being requested and any other information that the jury commissioner deems necessary.
2. Before receiving payment from the fund, shall submit verification from the juror's employer, if any, regarding the earnings information that is provided under paragraph 1 of this subsection. This verification may include the employee's most recent earnings statement or a similar document.

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3. In order to verify the weekly income if the juror is self-employed or receives compensation other than wages, shall provide a sworn affidavit attesting to the juror's approximate gross weekly income, together with any other information that the supreme court requires.

E. Jurors who are unemployed and are not eligible for payment pursuant to subsections C, paragraph 1 and subsection D of this section are eligible to be paid ~~\$40~~ AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR, even if they receive income in the form of spousal maintenance, pensions, retirement, unemployment compensation, disability benefits or other similar income. Commissioners shall not deduct these other forms of income in calculating the amount these jurors are to be paid from the fund.

F. JURORS WHOSE SERVICE LASTS MORE THAN FOUR DAYS AND WHO ARE ELIGIBLE FOR THE DEPENDENT CARE STIPEND PURSUANT TO § 21-221(A)(3) SHALL BE PAID THE STIPEND FROM THE LENGTHY TRIAL FUND, RETROACTIVE TO DAY ONE OF SERVICE, SUBJECT TO THE AVAILABILITY OF THE MONIES.

Appendix F: Proposed Amendments to ACJA § 5-109 Lengthy Trial Fund

ARIZONA CODE OF JUDICIAL ADMINISTRATION

Part 5: Court Operations

Chapter 1: Funding

Section 5-109: Lengthy Trials and Digital Evidence

- A. Purpose.** A.R.S. § 21-222 establishes the Arizona lengthy trial and digital evidence fund (ALTF) to pay full or partial earnings replacement or supplementation or to pay for care for one or more children or dependents subject to a juror's care to jurors who serve as petit jurors for more than ~~five~~ three days and who receive less than full compensation from their employers. This section includes procedures for paying eligible jurors and for seeking reimbursement from the ALTF.
- B. Program Administration.** The Administrative Office of the Courts (AOC) shall administer the ALTF.
- C. Filing Fee.** A filing fee of ~~\$15.00~~ \$21.00 is established pursuant to A.R.S. § 12-115. The clerk of the superior court shall collect the fee on civil complaints, answers to civil complaints, and motions to intervene in civil cases filed in superior court, as specified in Appendix A. The fee shall be deposited in the ALTF and used to reimburse lengthy trial and dependent care payments to jurors.
- D. Program Eligibility.**
1. Days of service. Jurors whose service exceeds ~~five~~ three days are eligible for payment from the ALTF. Jury service shall include every day or partial day of service that the court requires of jurors in response to the jury summons, including voir dire and the trial.
 2. Juror's eligibility. Jurors who serve on a trial that lasts more than ~~five~~ three days and who do not receive their normal earnings during that time may apply to the jury commissioner for additional juror compensation of up to \$300 per day from the ALTF. Jurors who are unemployed or who earn less than \$40 an amount that is equal to four times the minimum wage prescribed by section 23-363, subsections a and b, rounded up to the nearest dollar ("four times the statutory minimum wage") per day are eligible for a \$40 per day minimum payment equal to an amount that is four times the statutory minimum wage.
 3. Notice. When the court anticipates a lengthy trial, jurors shall be informed that they may qualify for additional juror compensation. Jury commissioners shall determine when the jurors shall submit claims and notify them accordingly, provided that all claims shall be submitted no later than 30 days after jury service is complete. Jurors requesting compensation for a lengthy trial shall submit a completed juror claim form, a statement from the juror's employer and any additional information, a statement from a dependent care provider, and documentation required by the jury commissioner necessary to process the claim. If the court makes interim payments to jurors throughout the trial, the jury commissioner shall request an initial juror claim form upon the juror's ~~sixth~~ fourth day of service. Jurors shall submit an updated juror claim form in the event of a change in the juror's financial circumstances.
- E. Payment Calculation.**
1. Jury commissioners shall pay each juror determined to be eligible for additional juror compensation at least ~~\$40~~ four times the statutory minimum wage per day, which includes the ~~\$12~~

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juror fee paid pursuant to A.R.S. § 21-221, for each day of jury service. For those who qualify for more than ~~\$40~~ the minimum reimbursement amount per day, payment shall not exceed \$300 per day.

2. Jury commissioners shall use the following formula to determine the amount due each juror for earnings replacement or supplementation claims:

$$(A - \text{\$12 four times the statutory minimum wage}) - B = C$$

$$C \times D = E$$

$$E + (\text{\$12 four times the statutory minimum wage} \times D) = F$$

A = Juror's normal gross daily earnings. If this amount is less than ~~\$40~~ four times the statutory minimum wage, use ~~\$40~~ four times the statutory minimum wage.

B = Juror's daily earnings actually received during jury service.

C = Daily amount due to the juror from the lengthy trial fund, not to exceed \$300.

D = Number of days of jury service for which payment is due.

E = Total ALTF payment due the juror.

F = Total payment to juror, excluding mileage reimbursement.

3. Jury commissioners shall base the calculation on the juror's normal gross earnings before any deductions for taxes, social security, insurance and other benefits. Using the verified earnings information provided by the juror provides, the jury commissioner shall deduct any gross earnings the juror received during the juror's term of service from the amount the juror would have earned had the juror not been serving.
4. Jury commissioners shall require jurors who earn commissions only, are self-employed, are temporarily employed, or are employed as contractors, to provide sufficient reliable documentation to identify with reasonable certainty the amount they would have earned on the days of jury service for which they are eligible for ALTF compensation.
5. Jury commissioners shall pay jurors an amount that is equal to four times the minimum wage prescribed by section 23-363, subsections a and b, rounded up to the nearest dollar for dependent care claims for each day a juror served.
- ~~56.~~ Jury commissioners shall advise the county of any payments of \$600 or more to any juror in the same year for filing Form 1099 with the Internal Revenue Service.
- ~~67.~~ Jury commissioners shall adopt procedures to ensure that confidential and personal financial information provided in support of an ALTF claim is not disclosed to the public pursuant to law.
- ~~78.~~ A juror who does not agree with the decision of the jury commissioner regarding payment may request that the presiding judge or their designee review the decision.

F. Reimbursement Procedures. [[No Change]]

G. Forms. [[No Change]]

APPENDIX A: *This table was omitted for this report's purposes.*

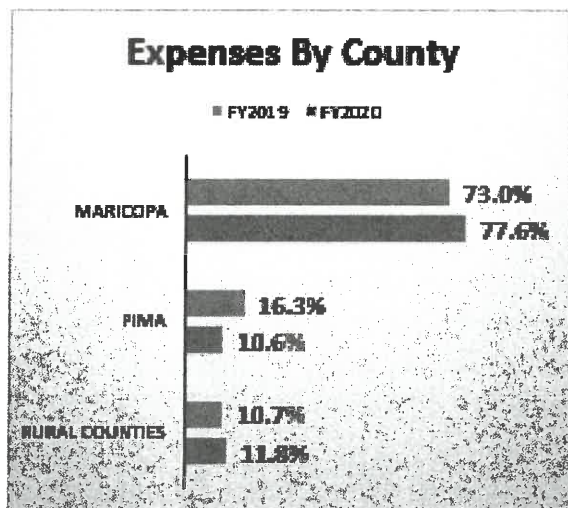
Appendix G: Arizona Lengthy Trial Fund: Revenues and Expenditures

Revenue Collections and Expenditure Trends

While revenue has increased by 10% from \$667,201 in FY16 to \$731,477 in FY20, expenditures have decreased by 17% from \$690,967 in FY16 to \$575,094 in FY20.

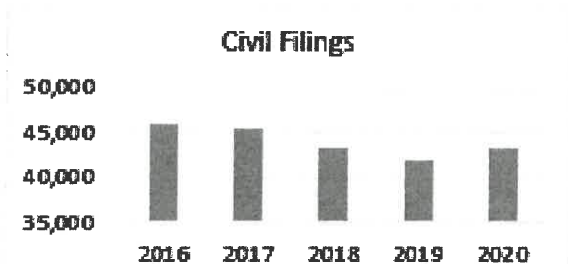
Maricopa Revenue Collections and Expenditures			
Fiscal Year	Revenue	Expenditure	Net
FY16	\$667,201	\$690,967	-\$23,766
FY17	\$706,706	\$485,202	\$221,504
FY18	\$704,019	\$545,232	\$158,787
FY19	\$721,683	\$623,489	\$98,194
FY20	\$731,477	\$575,094	\$156,383

Maricopa County's request accounts for 78% of total expenditures for fiscal year 2020.



General Jurisdiction Court Civil Filing

Statewide total civil filings decreased by 6%, from 45,766 in FY16 to 43,201 in FY20.



Estimated Expense for 3 and 4 Jury Trials

Reimbursement for jury trials lasting three days is estimated to cost an additional \$113,000 and four day \$133,000 for a total of \$246,000.

3 & 4 Day Jury Trials Estimated Expense			
Case Type	3-Days	4-Days	Total
Civil	\$ 10,746	\$ 13,532	\$ 24,278
Criminal	\$ 102,060	\$ 119,700	\$ 221,760
Total	\$ 112,806	\$ 133,232	\$ 246,038

\$12 Juror Reimbursement

The \$12 Juror reimbursement fee has not been changed since 1955. A one dollar increase from \$12 to \$13 is estimated to cost an additional \$55,000 statewide. While an increase from \$12 to \$48 would cost an additional two million dollars.

\$12 Juror Expense - Analysis Civil and Criminal Jury Trials		
County	Additional Expense	
	\$1 Increase	\$36 Increase
Maricopa	\$ 39,889	\$ 1,436,004
Pima	\$ 9,671	\$ 348,156
Rural Counties	\$ 5,691	\$ 204,870
Total	\$ 55,251	\$ 1,989,030

\$15 Fee based on CPI

Based on the CPI the \$15 in 2003 is now worth \$21.00(\$21.30) in 2020. The additional \$6 dollars is estimated to generate an additional \$243,825.

Last updated on June 8, 2021.

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**Report and Recommendations
of the Arizona Task Force
on Jury Data Collection, Policies and Procedures**

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October 4, 2021

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